

**NEW YORK STATE DEPARTMENT OF HEALTH**

A Request for Proposal for

Bureau of Early Intervention

RFP No. 1204241204

Mediation Services Provided in the New York State Early Intervention Program

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Schedule of Key Events

RFP Release Date	October 15, 2012
Written Questions Due	4:00pm ET October 29, 2012
Response to Written Questions	On or about November 12, 2012
Proposal Due Date	4:00pm ET December 2, 2012

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

### **DESIGNATED CONTACTS:**

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:

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### **Permissible Subject Matter Contacts:**

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

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

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## **A. INTRODUCTION**

The New York State Department of Health (Department) is issuing this Request for Proposals (RFP) to contract with an entity or organization that will administer the provision of mediation services for the Early Intervention Program (EIP) in all 62 counties counties in New York State.

Part C of the Individuals with Disabilities Education Act (IDEA) and New York State Public Health Law (NYSPHL) mandate the availability of mediation services for the EIP. Mediation is a voluntary, non-adversarial process by which the parent of a child and the Early Intervention Official (EIO) or Designee are assisted in the resolution of a dispute. Mediation services in the EIP are provided in all 57 counties and New York City by the state-wide system of Community Dispute Resolution Centers (CDRCs).

## **B. BACKGROUND**

The New York State EIP is part of the national Early Intervention Program for Infants and Toddlers with Disabilities and Their Families. First created by Congress in 1986 under IDEA, the EIP is administered by the Department through the Bureau of Early Intervention (BEI). BEI is responsible for general administration, supervision, and oversight of New York State's EIP. Its mission is to identify and evaluate those infants and toddlers whose healthy development is compromised and provide for appropriate interventions to improve child and family development. The EIP provides a range of therapeutic and supportive services for eligible children with disabilities ages birth to three years and their families.

The EIP is administered locally by 62 counties. Municipalities are responsible for ensuring that all potentially eligible children are identified, located, and evaluated to determine eligibility for the program; development of Individualized Family Service Plans (IFSP), which specify the goals and outcomes to be achieved through the provision of EI services and services necessary to achieve those outcomes; arranging for provision of EI services contained within IFSPs; and facilitating the timely transition of children to preschool special education services or other early childhood services by or around their third birthdays, in accordance with requirements set forth in State and federal laws and regulations. NYSPHL requires that all program services be provided at no cost to children's families.

All counties and New York City are required by NYSPHL to appoint a public health official as their EIO. The EIO is the single point of entry for children into the EIP. All children under three years of age who are suspected of having a disability, which includes a developmental delay and/or a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, must be referred to the EIO.

Children thought to be eligible for the EIP are entitled to a multidisciplinary evaluation. If the evaluation determines that the child is eligible for the EIP, the EIO, service coordinator, parent, and evaluator or designated contact from the evaluation team jointly develop an IFSP for a parent who requests services. An IFSP is an individualized written plan that is developed to meet the unique strengths and needs of the child and family. It states the outcomes expected to be achieved and specifies the details of all the approved early intervention services, i.e., when, where, and how often services will be delivered.

If a parent disagrees with the determination of the evaluator or with the local EIO with regard to

the eligibility for or provision of early intervention services or if the official fails to act within the specified time period as required, a parent may make a request in writing for mediation or an impartial hearing to resolve the dispute. According to NYSPHL and 10 NYCRR §69-4.17(g), the Department must ensure that a statewide mediation system is available to ensure parents and EIOs may voluntarily access a non-adversarial process for the resolution of complaints regarding the provision of early intervention services.

NYSPHL §2549(2) specifies that when a request for mediation is made to the EIO for the municipality in which the child resides, the municipality must “notify a community dispute resolution center designated by the commissioner to provide mediation services for such municipality.” Mediation services for the resolution of disputes regarding eligibility determination or early intervention service delivery must be available from CDRCs upon the written request of the parent and/or EIO and upon the mutual agreement of the parent and the EIO to participate in mediation.

## **C. DETAILED SPECIFICATIONS**

### **1. Eligible Bidders**

Eligible bidders must be not-for-profit entities who have a professional relationship with, and are currently authorized by, the statewide system of Community Dispute Resolution Centers (CDRCs) to act on behalf of the CDRCs or have authorization at the time of bid to act on behalf of the CDRCs. Eligible bidders must detail their relationship with CDRCs as per proposal requirements stated in Section D. 1. Technical Proposal. Eligible bidders must maintain such relationship and authorization for the duration of the contract period. Eligible bidders must be able to enter into a contract with New York State, serve as the administrator for the contract and its related requirements, represent and serve as the main contact representing CDRCs which provide the early intervention mediation services, facilitate the services provided by the CDRCs, disseminate information and deliver mediation information sessions to the CDRCs, ensure that the CDRCs meet the mediation requirements and documentation of the EIP, and ensure that early intervention mediation administrative documentation requirements are met. The selected bidder must have the demonstrated capacity to provide the services and perform the activities described in this RFP.

CDRCs are defined as centers which provide conciliation, mediation, arbitration or other forms and techniques of dispute resolution, are operated pursuant to a contract with the chief administrator of the courts of New York, and are compliant with all provisions of Article 21-A of the New York State Judiciary Law which defines the Community Dispute Resolution Centers Program (CDRCP).

The selected bidder is responsible for the administration of the contract and ensuring that the local CDRCs are fulfilling all mediation contract requirements. In this RFP, the term ‘contractor’ refers to the bidder who is awarded this contract. Subcontracting of the administrative responsibility is not allowed. Administrative responsibilities of the contractor are further specified in Section C. 3. Implementation and Administration.

### **2. Performance Requirements**

The Department will award one contract through this RFP to a qualified bidder for the administration of early intervention mediation services provided by the CDRCs. Mediation services will address disputes between municipalities and parents or other legal representatives

of children regarding early intervention services in New York State. The selected bidder must maintain the ability to act on behalf of the CDRCs for the duration of the contract period. Eligible bidders must detail their relationship with CDRCs as per proposal requirements stated in Section D. 1. Technical Proposal.

The selected bidder must serve as the main contact for the CDRCs, which provide the EIP mediation services. The selected bidder must facilitate the EIP mediation services provided by the CDRCs, disseminate EIP information to the CDRCs, ensure that the CDRCs meet the EIP mediation requirements, including documentation, and ensure that administrative documentation requirements are met.

The selected bidder will **ensure that the CDRCs complete** the following specific requirements to the satisfaction of the Department:

- a. Provide mediation services that comply with all relevant state laws, state regulations, federal laws and federal regulations, including but not limited to Title II-A of Article 25 of the Public Health Law, Subpart 69-4 of Title 10 of NYCRR, Part C of the Individuals with Disabilities Education Act and Title 34 of the CFR.
- b. Receive EIP requests for mediation from local EIP municipalities.
- c. Contact the parent and EIO, immediately upon receipt of a request for EIP mediation, to discuss the mediation process, a convenient site and time for the mediation, and the need for interpretive or alternative communication services, if any.
- d. Make appropriate arrangements for and convene mediations at a date and time within two weeks of receipt of the request by the CDRC, upon a determination of the mutual agreement of the parent and EIO to participate in mediation, unless an extension is requested or consented to in writing by the parent.
- e. Maintain the confidentiality of all personally-identifiable information and discussions that occur during the mediation process as required by state and federal law or regulation.
- f. Provide EIP mediation at no cost to the family.
- g. Complete the mediation process within 30 calendar days from the receipt of the request to the CDRC for each EIP mediation requested.
- h. Complete a Mediation Report on the form provided by the Department for each mediation requested. The Mediation Report will include information related to Case Development, Conciliation, and Agreement (see definitions on section D.2.a-e starting on p.14) .
- i. Forward all *individual* Mediation Reports to the successful bidder on a regular basis so that the successful bidder can fulfill their administrative requirements.

- j. Document the terms of a negotiated Mediation Agreement in writing, including a list of unresolved issues, and obtain the signatures of the parent and EIO on forms provided by the Department.
- k. Provide the *written* Mediation Agreement in the dominant language of the parent or other alternative mode of communication in addition to a written agreement in English, whenever feasible.
- l. Forward a copy of the Mediation Agreement to the parent, EIO, service coordinator and selected bidder within five business days of reaching the agreement.
- m. Document, in writing, the terms of all EIP agreements achieved through conciliation and forward a copy of the Conciliation Agreement to the parent, EIO, service coordinator and selected bidder within five business days of reaching the agreement.
- n. Complete all activities started under the authority of the previous Contractor and transfer all pending documentation, as described in bullets h. through m. above to the selected bidder upon execution of the contract.
- o. Maintain EIP mediation records for a period of at least six years, as per 10 NYCRR §69-4.17(g) (14)

### **3. Implementation and Administration**

The selected bidder is expected to begin contract activities immediately upon contract execution and to continue all work associated with this contract through September 30, 2017. The selected bidder must assure that they can fulfill all contract deliverables. Once awarded, signature on the contract indicates that the selected bidder agrees to all the terms, conditions, and deliverables listed in the RFP.

#### **a. Implementation and Administrative Activities**

Activities include the following:

- i The selected bidder must answer questions/issues from CDRCs, including providing a full explanation of EIP procedures and mediation process specifics.
- ii The selected bidder must provide Mediation Information Sessions via live presentation, on-line or teleconference for the local CDRCs, which include but are not limited to content specific to the New York State EIP mediation process, regulatory requirements, regional mediation issues and concerns, and include the following activities:
  - a. Coordination of EIP Mediation Information Sessions for the local CDRCs to occur within the first three months of the contract period and at least yearly for the remainder of the contract period
  - b. Documentation of information session dates, location, number of participants, and agendas for all EIP related Mediation Information Sessions
  - c. In addition to information sessions , provision of information to attendees in hardcopy or by referral to on-line resources, as applicable
  - d. Referral of programmatic or policy questions from attendees on standardized reporting forms to Department staff for response/clarification

- iii The selected bidder must convey to the Department, in a manner and format specified by the Department, concerns and questions brought to the contractor's attention by the CDRC.
- iv The selected bidder must convey information from the EIP to the CDRCs, in a manner and format specified by the Department, to address issues/questions.
- v The selected bidder must provide public access to up-to-date information on the EIP mediation process and contact information for the local CDRCs via an online electronic medium. It is acceptable for the bidder to include EIP/CDRC mediation information via an existing online electronic medium already developed by/for the bidder to convey other mediation related information and activities.
- vi The selected bidder must employ, supervise, and maintain an adequate level of qualified staff to fulfill the contractual requirements.

**b. Administrative Reporting**

Activities include the following:

i The selected bidder is required to submit to the Department on a quarterly basis, a Claim for Payment and all required supporting documentation described in ii, iii, and iv on such forms and in such detail as the Department shall require. All claims, and the required accompanying supporting documentation outlined in ii, iii, iv and v, submitted by the contractor, pursuant to this AGREEMENT, shall be submitted to the department no later than 30 days after the end date of the period for which payment is being claimed.

ii The selected bidder is required to submit a Budget Statement and Report of Expenditures (BSROE) on such forms and in such detail as the Department shall require. A BSROE includes prior period, current period, and to-date expenditures for each object of expense, as follows:

- administrative services
- mediation fees
- conciliation fees
- case development fees
- miscellaneous costs

iii The selected bidder is required to submit a Case Summary Report, in a format specified by the Department, that includes the following information for each mediation requested in the reporting quarter:

- county of request
- case number
- issues
- date county received the request
- date CDRC received the request/intake date
- disposition date
- disposition
- number of mediation sessions or amount of time spent on case development
- total amount due

iv The selected bidder is required to submit a Mediation Report, completed and submitted by the CDRCs, in a format specified by the Department, for each mediation requested. This

report will include the following information *for each mediation* requested in the reporting quarter:

- case number
- county
- CDRC name
- referral source
- date county received mediation request
- date county sent notification of the request to the CDRC
- date CDRC received the request from the county/intake county of request
- date CDRC contacted the parties
- issues in dispute
- other issues/details
- total duration of case development time for cases that do not result in a mediation session
- mediation session(s) date(s)
- total duration of session
- any previously scheduled dates
- name of mediator
- date of case disposition
- case disposition
- problems encountered/resolved/outstanding
- printed name and signature of CDRC coordinator

v The selected bidder is required to obtain from the CDRCs all EIP Mediation or Conciliation Agreements reached by the parties and submit these Agreements to the Department on a monthly basis in a separate mailing from the quarterly voucher documents. All EIP Mediation or Conciliation Agreements for any given month must be submitted to the Department by the fifteenth of the following *month*. The submission must be mailed in a trackable, secure fashion in adherence with HIPAA (Health Insurance Portability and Accountability Act) and FERPA (Family Educational Rights and Privacy Act) requirements.

vi The selected bidder is required to submit a summary of information sessions, including dates, locations, number of participants, agendas, and any materials provided, in a format specified by the Department.

vii The selected bidder is required to submit an Annual Report, in a format specified by the Department, which compiles the results of the individual mediation cases for the contract year. This report should provide an overall summary of the mediation activities conducted for that year and include an executive analysis of the year. An executive analysis includes statistical reports and a narrative addressing the contractor's activities and accomplishments and activities performed by the local CDRCs, in a format to be developed by the Department. The report will be due not later than 30 days from the end of each annual period.

**c. Quality Assurance**

The selected bidder is responsible for developing and implementing an internal control process to ensure that the activities as required in this RFP are performed on an ongoing

basis. Specific quality assurance measures to be undertaken should be detailed in the proposal.

**d. Staffing and Organizational Experience**

The eligible bidder must submit evidence that its staff members possess the necessary experience and qualifications to perform the type of services required under this contract and that it will continue to maintain staff members who meet the requirements to perform these activities for the duration of the contract period. The selected bidder must show that, as an organization, it is currently performing similar services or has a history of performing such services. The selected bidder must submit at least two references to substantiate these organizational qualifications. If possible, one reference should be from a current client or entity with whom the bidder has a current contract, agreement or working relationship.

**e. Confidentiality**

The selected bidder will be responsible for maintaining the confidentiality of all files. The contractor and its employees and subcontractors will be subject to all HIPAA and FERPA requirements.

**f. Contractor Payment**

Contractor payment will be processed through submission of quarterly claims as outlined in Administrative Reporting requirements, in Section 3.C.b, to the Department's designated payment office. Quarterly claims will be due 30 days after the end of the quarter of the period for which payment is claimed and must be accompanied by a Budget Statement and Report of Expenditures, Case Summary Report, and all Mediation Reports for that quarter. All Claims, and supporting documentation submitted by the contractor pursuant to this AGREEMENT, shall be submitted to the DEPARTMENT no later than 30 days after the end date of the period for which payment is being claimed.

Claims that are submitted without all required documents will not be processed for payment. The Contractor acknowledges that it will not receive payment for mediations that were not included in the voucher submitted for the quarter in which the mediation occurred. Failure of the successful bidder to meet the deliverables outlined in this contract may also result in Claims not being paid until the deliverables are met.

**g. Contract Period**

The contract resulting from this RFP is expected to be for a period of five years, with an anticipated contract start date on or around October 1, 2012. All work related to this project must be completed by September 30, 2017.

**h. Transition**

The selected bidder will be expected to provide for an orderly and controlled transition to either the Department or a successor Contractor at the end of the contract period, with minimum disruption of report generation, provision of mediation services, reporting or any other contract activity. At the end of the contract, the Contractor will transfer complete reporting, as described in C. Detailed Specifications, to the Department, or at the Department's option, to a successor Contractor. The Contractor shall similarly transfer to the Department or the successor Contractor all nonproprietary data files and documentation. Additionally, the Contractor must transfer all written policies and procedures, information session materials, and any resources utilized in the administration of EI mediation services.

The bidder must include a plan in the technical proposal which specifies what will be transferred and how delivery of the information and materials will be made to the successor Contractor.

**i. Conflict of Interest**

Bidders must disclose all business relationships with or ownership interest in entities including, but not limited to, providers of early intervention services, organizations or trade associations representing such providers in New York State, or any other organization having an interest in the provision of NYS early intervention services (**Attachment 7 – Transmittal Letter**). In cases where such relationship(s) exist, bidders must describe how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided.

The Department reserves the right to reject any and all bids, at its sole discretion, based on any potential conflict of interest.

**D. PROPOSAL REQUIREMENTS**

The requirements established by this RFP for proposal content and format will be used to evaluate the bidder's proposal. The bidder's compliance to the format prescribed herein, as well as the bidder's response to each specific requirement and question stated in the RFP, will be considered during the evaluation process. Please use the Proposal Checklist supplied as **Attachment 6** to ensure that all required forms are included in your submission.

Proposals should provide a concise yet complete description of the bidder's ability to meet the requirements of the RFP. Proposals must be submitted on paper (no electronic submissions) in two distinct parts:

- Part 1a – Technical Proposal, and
- Part 1b – Financial Proposal

These parts must be submitted separately, in sealed envelopes, be identified with the name of the bidder and clearly marked as *Technical Proposal* and *Financial Proposal*.

Bidders must submit **one signed original** and **three copies** of each proposal.

These must be packed into a third envelope and sealed and marked accordingly with proper bidder name and address.

Proposal packages should be clearly labeled:

*BEI Mediation Services Provided in the New York State Early Intervention Program RFP  
FAU#1204241204.*

**No financial bid or pricing information should be included in a bidder's Technical Proposal. Technical and Financial Proposals that fail to be submitted in separate and sealed envelopes will be rejected.**

Each page of the proposal should be numbered consecutively from the beginning of the proposal through all appendices. The narrative should be double spaced, using a 12 point font or larger, with minimum one inch margins all around, and adhere to the maximum page limits.

## **1. Technical Proposal**

The bidder's response must include a Transmittal Letter (**Attachment 7**) signed by an official authorized to bind the bidder to the provisions of the RFP. The Transmittal Letter response must attest that the bidder has a minimum of five years of successful experience coordinating the delivery of mediation services and the bidder is currently authorized by the state-wide system of Community Dispute Resolution Centers (CDRCs) that provide mediation services for the EIP in all 57 counties and New York City, to act on behalf of the CDRCs or have authorization at the time of bid to act on behalf of the CDRCs. The Transmittal Letter must also disclose any business relationships and/or ownership interest that may represent a conflict of interest for the bidder as described by the Conflict of Interest specifications of Section C.3, or state that no conflict of interest relationship exists. In cases where such a relationship exists, the bidder must submit with the Transmittal Letter a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided.

Responses must address all Technical Proposal requirements. The Technical Proposal must include narrative descriptions of how the bidder will manage all aspects of the performance requirements of the contract and activities as expressed in Sections C. 2. and C. 3. The description submitted should include details of the technical and administrative resources to be used to accomplish the requirements of the contract resulting from this RFP, such as proposed staffing, quality assurance measures, and reporting to the Department. Bidders may provide additional information or recommendations relevant for consideration in the Department's determination of award of this contract. Each bidder's Technical Proposal must include separate responses to the following requirements pertaining to format and content:

### **i Cover Sheet**

The bidder must submit a Cover Sheet for the Technical Proposal (**Attachment 4**), signed by an official authorized to bind the bidder to the provisions of the RFP and the bidder's response. All relevant fields should be completed legibly to assure that the evaluation committee can contact the bidder for clarification of bid contents.

### **ii Executive Summary (4 page limit)**

The bidder's Technical Proposal must contain an Executive Summary which describes the bidder's understanding of the performance requirements outlined in Section C of the RFP, and an overview of how the bidder will provide information and recommendations to promote the efficient, economical, productive, and stable delivery of mediation services. It must include affirmative statements that the bidder has a minimum of five years of successful work experience coordinating the delivery of mediation services, and can begin implementing the project according to the date prescribed in the RFP.

### **iii Project Description (12 page limit)**

The selected bidder will be responsible for conducting all work necessary to meet the contract performance requirements. Provide a detailed description of the bidder's proposed plan to implement, perform, and oversee the requirements as stated in C.2. and the administrative tasks and requirements specified in section C. 3. a-e and h.

#### **iv Organizational Background and Experience (5 page limit)**

- a. Provide a description of the bidder's organization and its business mission, headquarters and branch office locations, parent and subsidiary organizations, and the relationship between the bidder's organization and any parent or subsidiary. The bidder must include the number of years the organization has been in business and describe its ability to meet the performance requirements of this RFP, including the skills or abilities of the organization that are necessary to accomplish the contract requirements.
- Describe in detail the bidder's experience in coordinating the delivery of mediation services. The experience referenced should substantiate the bidder's qualifications and capabilities to perform the RFP's specifications described in Section C.
- Describe in detail the bidder's relationship with the statewide system of CDRCs and how the relationship will support the provision of EIP mediation services.
- Submit at least two references to substantiate the qualifications of the bidder. When possible, one reference should be from a current client or entity with whom the bidder has a current contract, agreement or working relationship.

#### **v Staffing Background and Experience (6 page limit)**

- Describe the work experience and other relevant background of key staff who will be assigned to work under the contract resulting from this RFP.
- Identify an individual responsible for fulfilling the requirements of this contract and detail their administrative experience.
- Include a staffing plan necessary to accomplish the contract requirements for the duration of the contract period.
- Describe how staff members meet the requirement to perform these activities for the duration of the contract period. The bidder must show that it is currently performing similar services or has a history of performing such services.

## **2. Financial Proposal**

The bidder must submit a Cover Sheet for the Financial Proposal (**Attachment 5**), signed by an official authorized to bind the bidder to the provisions of the RFP and the bidder's response. **The signed Cover Sheet includes an attestation that the bidder's Financial Proposal will remain valid for a minimum of 365 days from the RFP proposal due date.** All relevant fields should be completed legibly to assure that the bidder can be contacted for clarification of bid contents if needed.

The Financial Proposal must include both a completed Bid Form (**Attachment 1**) and Bid Detail Sheet (**Attachment 3**). The Bid Detail Sheet must contain service rates and total yearly prices for contract activities. All costs associated with the contract activities must be included in prices listed on the Bid

Detail Sheet, including but not limited to travel, personnel costs (including fringe), overhead, supplies, and miscellaneous costs.

Once a contract is awarded, the Selected Bidder becomes the CONTRACTOR. The Bid Detail Sheet will be used to develop the schedule for contractor payment over the course of the contract. The CONTRACTOR will be paid a quarterly flat administrative fee. Any additional fees will be based on the actual number of Mediations, Conciliations and Case Developments that are satisfactorily completed in a given quarter and miscellaneous costs as described below.

The Bid Detail Sheet is broken into categories for which the bidder should provide prices. The total of the contract activity prices on the Bid Detail Sheet should equal the total bid price listed on the Bid Form. The bidder should consider all costs related to that activity listed when determining a price, specifically including, but not limited to, the following:

**a. Administrative Services**

Prices for this category should include all costs associated with program oversight, supervision, procedural and materials development, case management, quality control, coordination, and reporting. Administrative fees depend on the following:

- i** case volume
- ii** support of organizational overhead based on percentage of staff time involvement or potential time involvement in contact
- iii** the amount of involvement in the actual case processing
- iv** other activities including information sessions, responding to questions from potential users of service, support to CDRC staff, reporting to the Department and dealing with quality control issues

**b. Mediation Case Fees**

A mediation session is when there is an actual meeting between the parent(s) and EIO, with a trained mediator facilitating improved communication between the parties, providing a process to clarify the issues and concerns, areas of agreement and disagreement, applicable laws, regulations and policies, and potential strategies for reaching agreement. Whether the session results in successful negotiation of a full or partial agreement or unsuccessful negotiation of no agreement, reports are generated and shared with the parent(s), EIO, and Contractor.

Prices for this category should include all costs associated with a request for mediation that resulted in a mediation held. This should include all costs related to the amount of CDRC staff time required beginning with contacting the parties who are involved in the mediation process, providing information about the process, scheduling the mediation, conducting the mediation, arranging for appropriate interpretive or other services for persons with disabilities, and preparing, completing, and disseminating all required paperwork including written agreement when appropriate. This should also include all costs related to CDRC overhead, and percentage of salary cost and fringe for case coordinator and administrative staff that process cases.

**c. Conciliation Fees**

Conciliation is a written agreement reached prior to mediation via CDRC involvement. The written agreement is similar to a mediation agreement but is done through the CDRC coordinator talking with both sides and, if an agreement is reached, making it into a written, signed agreement. Prices for this category should include all costs related to the amount of CDRC staff time required, beginning with contacting the parties who are involved in the mediation process, providing information about the process, all additional contacts with these parties, and preparing, completing,

and disseminating all required paperwork including written agreement reached. This should also include all costs related to CDRC overhead, and percentage of salary cost and fringe for CDRC case coordinator and administrative staff that process cases.

**d. Case Development Fees**

Case development is when CDRC time is spent on a case that is closed prior to a mediation session being held. Prices for this category should include all costs associated with a request for mediation for cases closed prior to a mediation held or a conciliation agreement reached via CDRC involvement. This should include all costs related to the amount of CDRC staff time required beginning with contacting the parties who are involved in the mediation process, providing information about the process, and all additional contacts with these parties prior to the closing of the case. This should also include all costs related to CDRC overhead, and percentage of salary cost and fringe for the CDRC case coordinator and administrative staff that process cases.

**e. Miscellaneous Costs**

Prices for this category should include interpretive services, outreach and travel.

**3. Method of Award**

This is a competitive procurement that will result in a contract to complete the contract deliverables and performance requirements as stated in Section C. At the discretion of the Department, any and all proposals may be rejected.

The bidder with the highest total combined Technical Proposal score and Financial Proposal score will be selected. There is a maximum achievable total combined score of 100 (Technical Proposal score 70 plus Financial Proposal score 30). Bidders will be ranked from high to low based on their total combined score. In order to award a contract, the Department will select the bidder that submits the proposal that offers the best value as determined by the combined Technical Proposal and Financial Proposal score.

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

- Lowest cost
- Minority/Women-owned Business Enterprise (MWBE) utilization
- Past experience
- References

**Evaluation Committees**

Two evaluation committees will be established to review the proposals. The Technical Evaluation Committee will consist of three program experts and one alternate. The Financial Evaluation Committee will consist of two reviewers and an alternate who will verify the accuracy of the Bid Form and Bid Detail Sheet and conduct the mathematical formula required to determine the final financial score. Alternates for each team will be trained for the review, but will not review proposals unless one of the evaluators cannot complete their duties due to unforeseen circumstances. A member of the Financial Evaluation Committee may be required to contact the bidder to verify figures or resolve discrepancies in the Bid Form and/or Bid Detail Sheet.

**Selection Committee**

The Bureau of Early Intervention will collect and tabulate all evaluation scores from the Technical and Financial Evaluation Committees. Technical evaluation scores will be averaged, resulting in one technical score for each proposal. The final technical score (ranging from 0-70) and the final financial

score (ranging from 0-30) will be added together to establish the proposal's final overall score (ranging from 0-100). Proposals will be sorted in score order, with the highest score listed first. The proposal with the highest combined score will be selected for contract award.

#### **a. Compliance Evaluation**

All responses to the RFP will be subject to a Compliance Evaluation. All responses that pass the Compliance Evaluation will be submitted to both the Technical Evaluation Committee and the Financial Evaluation Committee. Bidders that fail the Compliance Evaluation will be eliminated from the procurement process for this RFP.

When completing the Compliance Evaluation, the Department has the right to request additional information or request information that is necessary to satisfy the requirements of the Compliance Evaluation.

The Compliance Evaluation will have a pass/fail screening that includes the following requirements:

1. The selected bidder must be a not-for-profit entity that has a professional relationship with, and is currently authorized by the state-wide system of Community Dispute Resolution Centers (CDRCs) that provides mediation services for the EIP in all 57 counties and New York City, or has authorization at the time of bid to act on behalf of the CDRCs, and must maintain such authorization for the duration of the contract period (**Attachment 7**).
2. The selected bidder must have a minimum of five years of successful work experience coordinating mediation services as attested to in the Transmittal Letter (**Attachment 7**).
3. The selected bidder must be able to begin implementing the project according to the date prescribed in the RFP.
4. The bidder does not have a conflict of interest as determined through material submitted with the Transmittal Letter (**Attachment 7**).
  - o If a potential conflict of interest is noted, a description of the relationships that would cause the potential conflict of interest must be included with the Transmittal Letter with a narrative of how the potential conflict of interest and / or the disclosure of confidential information relating to the contract will be avoided.
5. The bid is submitted prior to the required deadline, contains a signed Transmittal Letter, and contains signed Cover Sheets for both the Technical and Financial Proposals.

#### **b. Technical Proposal Score (Total - 70 points)**

The Department will evaluate and score proposals based on each bidder's ability to complete the performance requirements as described in this RFP. The evaluation will be based on the bidder's written Technical Proposal and any responses to clarifying questions and the Department's and other State agencies' experience with the bidder as identified via the Vendor Responsibility Attestation (Attachment 15). Information obtained through reference checks will be used to verify the proposal and are not part of the scoring process.

The following formula will be used to determine each bidder's final Technical Proposal score:

$t = (x / y) * 70$  where:

x = technical score of proposal being scored,

y = technical score of highest technical scoring proposal,

70 = maximum technical points available, and  
t = normalized technical score for bidder being scored

For example, the score of the three highest scoring Technical Proposals would be calculated as follows:

Technical Proposal Ranking	Raw Technical Evaluation Score	% of Score to Highest Score	Score ( x ) / Highest Score ( Y ) x 70	Final Score ( t )
Highest score	65 ( y )	65/65 = 100%	1.000 x 70 = 70.0	<b>70.0</b>
Second highest score	55 ( x )	55/65 = 84.6%	0.846 x 70 = 59.2	<b>59.2</b>
Third highest score	50 ( x )	50/65 = 76.9%	0.769 x 70 = 53.8	<b>53.8</b>

**c. Financial Proposal Score (Total – 30 points)**

The Financial Proposal maximum score of 30 will be awarded to the bidder with the lowest total bid (price) for all contract activities for the entire five year contract period.

Scores ranging up to 30 will be awarded to bidders by calculating the percentage that the lowest total bid (price) is of the other bidders’ total bid, and then multiplying that percentage times the maximum score of 30.

The following formula will be used to determine each bidder’s final Financial Proposal score:

$t = (y / x) * 30$  where:  
x = total bid price of proposal being scored,  
y = total bid price of the lowest bid,  
30 = maximum financial points available, and  
t = normalized financial score for bidder being scored

For example, the score of the three highest scoring Financial Proposals would be calculated as follows:

Financial Proposal Ranking	Total Bid Price	% of Lowest Total Bid Price ( y/x )	% of Lowest Total Bid Price ( y/x ) x 30	Final Score ( t )
Lowest total bid price	\$10 ( y )	10/10 = 100%	1.000 x 30 = 30.0	<b>30.0</b>
Second lowest total bid price	\$20 ( x )	10/20 = 0.5%	0.500 x 30 = 15.0	<b>15.0</b>
Third lowest total bid price	\$30 ( x )	10/30 = 3.3%	0.333 x 30 = 10.0	<b>10.0</b>

**E. ADMINISTRATIVE**

**1. Issuing Agency**

This RFP is a solicitation issued by the New York State Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

## 2. Inquiries

Any questions concerning this solicitation must be directed to:

Margaret Adeigbo  
Bureau of Early Intervention  
NYS Department of Health  
ESP Corning Tower, Room 219  
Albany, NY 12237  
E-mail: [provider@health.state.ny.us](mailto:provider@health.state.ny.us)

Each inquiry should cite the RFP section and paragraph to which it refers. Written questions will be accepted until the date listed in the Schedule of Key Events. Any questions submitted electronically via email must include the following in the subject line of the e-mail: "BEI Mediation Services Provided in the New York State Early Intervention Program RFP FAU#1204241204."

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.health.ny.gov/funding/> on or about the date listed in the Schedule of Key Events.

## 3. Submission of Proposals

Interested bidders should submit one original and three signed copies of their Bid Proposal not later than 4:00 p.m. on the date listed in the Schedule of Key Events. The Technical and Financial portions of bids must be contained within separate sealed envelopes that are contained within another envelope. Originals and copies should not be bound or stapled; please use rubber bands or clips. Proposals may be submitted via mail service or hand delivered. Bids submitted electronically via email or fax **will not** be accepted.

Responses to this solicitation should be clearly marked "BEI Mediation Services Provided in the New York State Early Intervention Program RFP FAU# 1204241204" and directed to:

Terry Ayers  
Bureau of Early Intervention  
New York State Department of Health  
Empire State Plaza, Corning Tower, Room 287  
Albany, NY 12237

It is the bidder's responsibility to see that bids are delivered to Room 287 prior to the date and time of the bid due date. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to Room 287 will not be considered.

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

A Checklist for Proposal Submission has been included as **Attachment 6** to this RFP. Bidders

should use the checklist to ensure a complete proposal is submitted. Failing to submit a complete proposal may result in the proposal being disqualified from the selection process.

#### **4. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO:**

- a) Reject any or all proposals received in response to the RFP;
- b) Withdraw the RFP at any time, at the agency's sole discretion;
- c) Make an award under the RFP in whole or in part;
- d) Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
- e) Seek clarifications and revisions of proposals;
- f) Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
- g) Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- h) Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
- i) Change any of the scheduled dates;
- j) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- k) Waive any requirements that are not material;
- l) Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
- m) Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- n) Utilize any and all ideas submitted in the proposals received; and
- o) Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
- p) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

#### **5. Payment and Reporting**

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

New York State Department of Health  
Administrative Services Unit  
Bureau of Early Intervention  
Empire State Plaza, Corning Tower, Room 287  
Albany, NY 12237

Payment for invoices and/or Claims submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic

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

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

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

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

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

Payment Terms will be:

Contractor payment will be done through submission of a Standard Voucher submitted to the Department's designated payment office. The Voucher must follow the format provided by the Department. Quarterly Claims will be due 30 days after the end of the month of the period for which payment is claimed and must be accompanied by a Budget Statement and Report of Expenditures, a Case Summary Report, and a Mediation Report for each mediation requested. Claims submitted without all required documents will not be processed for payment. As discussed in section C. Detailed Specifications, Contractor Payment; the Department may withhold payment for mediations that were requested in any quarter that were not included in the voucher submitted for that quarter. Failure of the contractor to meet the deliverables outlined in this contract may also result in Claims not being processed until the deliverables are met.

## **6. Term of Contract**

This agreement shall be effective upon approval of the NYS Office of the State Comptroller. The contract resulting from this RFP is intended to be for the period October 1, 2012 through September 30, 2017.

This agreement may be canceled at any time by the Department 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.

## **7. Debriefing**

Once an award has been made, bidders may request a debriefing of their proposal. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten business days from date of award or non-award announcement.

## **8. Protest Procedures**

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found on the OSC website at: [http://www.osc.state.ny.us/agencies/gbull/g\\_232.htm](http://www.osc.state.ny.us/agencies/gbull/g_232.htm).

## **9. Vendor Responsibility Questionnaire**

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders must also complete and submit the Vendor Responsibility Attestation (**Attachment 15**).

## **10. State Consultant Services Reporting**

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

The selected bidders for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

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

These forms are included as **Attachments 13 and 14** of this document.

## **11. Lobbying Statute**

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

1. 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;
2. 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;
3. 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;
4. authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
5. 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;

6. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
7. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
8. modifies the governance of the New York State Commission on Public Integrity;
9. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
10. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
11. establishes the Advisory Council on Procurement Lobbying.

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

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

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

## **12. Accessibility of State Agency Web-based Intranet and Internet Information and Applications**

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

## **13. Information Security Breach and Notification Act**

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual’s unencrypted personal information plus one or more of the following: social security number, driver’s license number or non-driver ID, account number, credit or debit card number plus security code, access code

or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>

#### **14. New York State Tax Law Section 5-a**

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

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

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto (Attachment 10). Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must complete and submit to the Department of Health the form ST-220-CA attached hereto (Attachment 11) certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

#### **15. Piggybacking**

New York State Finance Law Section 163(10)(e) (see also <http://www.ogs.state.ny.us/procurecounc/pgbguidelines.asp>) allows the Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

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

## NEW YORK STATE LAW

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

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

### Business Participation Opportunities for MWBEs

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

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

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

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

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

Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any

modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.

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

If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

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

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

#### Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

## F. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal will, itself, less Attachment 11, Sample State Contract, be referenced as an appendix of the contract.

- APPENDIX A - Standard Clauses for All New York State Contracts
- APPENDIX B - Request for Proposal
- APPENDIX C - Proposal

The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.

- APPENDIX D - General Specifications
- APPENDIX E

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

- Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
  - CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - C-105.2** – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
  - SI-12** – Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance.
- Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
  - CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR

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

## **G. ATTACHMENTS**

1. Bid Form
2. No Bid Form
3. Bid Detail Sheet
4. Technical Proposal Coversheet
5. Financial Proposal Coversheet
6. Proposal Checklist
7. Transmittal Letter
8. NYS Department of Health Lobbying Form
9. Vendor Responsibility Attestation
10. NYS Department of Health M/WBE Procurement Forms
11. Sample Standard Contract with Appendices

**Attachment 1**

**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 \$\_\_\_\_\_ for five years.  
(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



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

With Bid

Upon Award

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

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

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

-----

\_\_\_\_\_

(Officer Signature)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Officer Title)

\_\_\_\_\_

(Telephone)

\_\_\_\_\_

(e-mail Address)



**Attachment 3**

**NYS Early Intervention Mediation Services**

**Bid Detail Sheet\***

(a) Service	(b) Rate	(c) Unit	(d) Estimated Number of Units Per Year	(e) Subtotal (b x d)
<b>YEAR 1</b>				
Administrative Services	\$	Quarter	4	\$
Mediation Cases	\$	Completed Session	137	\$
Conciliations	\$	Each	5	\$
Case Development	\$	Closed Case	66	\$
Miscellaneous	\$	Year	1	\$
<b>Year 1 Total</b>				<b>\$</b>
<b>YEAR 2</b>				
Administrative Services	\$	Quarter	4	\$
Mediation Cases	\$	Completed Session	144	\$
Conciliations	\$	Each	5	\$
Case Development	\$	Closed Case	69	\$
Miscellaneous	\$	Year	1	\$
<b>Year 2 Total</b>				<b>\$</b>
<b>YEAR 3</b>				
Administrative Services	\$	Quarter	4	\$
Mediation Cases	\$	Completed Session	151	\$
Conciliations	\$	Each	5	\$
Case Development	\$	Closed Case	73	\$
Miscellaneous	\$	Year	1	\$
<b>Year 3 Total</b>				<b>\$</b>
<b>YEAR 4</b>				
Administrative Services	\$	Quarter	4	\$
Mediation Cases	\$	Completed Session	159	\$
Conciliations	\$	Each	5	\$
Case Development	\$	Closed Case	76	\$
Miscellaneous	\$	Year	1	\$
<b>Year 4 Total</b>				<b>\$</b>
<b>YEAR 5</b>				
Administrative Services	\$	Quarter	4	\$
Mediation Cases	\$	Completed Session	167	\$
Conciliations	\$	Each	5	\$
Case Development	\$	Closed Case	80	\$
Miscellaneous	\$	Year	1	\$
<b>Year 5 Total</b>				<b>\$</b>
<b>Five Year Total</b> (Year 1 Total + Year 2 Total + Year 3 Total + Year 4 Total + Year 5 Total = Five Year Total)				<b>\$</b>

I, \_\_\_\_\_, for and on behalf of the Bidder organization, signify that the information contained herein is true and accurate to the best of my knowledge and that the above named organization agrees to abide by the terms of the approved proposal and is fully able and willing to carry out deliverables contained herein.

Signature \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

\* Requests for mediation vary from year to year thus the figures in column D are **estimates** based on historical data. For bidding purposes these should not be changed. If the number of units exceeds the proposed estimates, it is understood by the contractor that upon agreement regarding payment for those instances, the contractor and CDRCs will continue to deliver mediation services beyond the amount specified.

## Attachment 4

### NYS Early Intervention Mediation Services

### Technical Proposal Cover Sheet

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

# Attachment 5

## NYS Early Intervention Mediation Services

### Financial Proposal Cover Sheet

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

**By signing this form the above Bidder or Authorized Representative attests that the bid price submitted on the Bid Form (Attachment 1) will remain valid for a minimum of 365 days from the RFP Due Date**

## Attachment 6

### Proposal Checklist

#### NYS Early Intervention Mediation Services Project

Checklist for Proposal Submission (For bidder's use only; should not be included in the proposal.)

- The Technical Proposal and the Financial Proposal are packaged in separate, sealed, and appropriately labeled envelopes.
- Signed original plus three (3) additional copies of the Technical and Financial Proposals are enclosed.
- Technical Proposal Cover Sheet (Attachment 4) is completed, signed, dated and included with the Technical Proposal.
- Financial Proposal Coversheet (Attachment 5) is completed, signed, dated and included with the Financial Proposal.

#### ***Technical Proposal should include:***

- Executive Summary
- Project Description (provide a detailed plan to implement, perform, and oversee the requirements as stated in RFP Sections C2 and C3).
- Organizational Background and Experience
  - Provide detailed information regarding the bidder's organization, its experience in coordinating mediation services, and its relationship with the state-wide system of CDRCs.
  - Include two references that show the bidder is currently performing similar services or that the bidder has a history of performing such services.
- Staffing Background and Experience
  - Including a staffing plan and references for key staff.
  - Identify an individual responsible for fulfilling the requirements of the contract, including detailing their administrative experience.
- Transmittal Letter (Attachment 7) is completed, signed, dated and included with the Technical Proposal.
  - If a potential conflict of interest is noted, a description of the relationships that would cause the potential conflict of interest must be included with the Transmittal Letter with a narrative of how the potential conflict of interest and / or the disclosure of confidential information relating to the contract will be avoided.

#### ***Financial Proposal should include:***

- Financial Proposal Cover Sheet (Attachment 5) is completed, signed, dated and included with the Financial Proposal.
- The Bid Form (Attachment 2) is completed, signed and dated
- The Bid Detail Sheet (Attachment 3) is completed and included with the Financial Proposal.
- Completed N.Y.S. Taxation and Finance Contractor Certification Form ST-220-TD (Attachment 10)
- Completed N.Y.S. Taxation and Finance Contractor Certification Form ST-220-CA (Attachment 11)
- Completed State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term (Attachment 13)
- Completed State Consultant Services Form B, Contractor's Annual Employment Report (Attachment 14)
- Vendor Responsibly Attestation (Attachment 15) is completed and included with the Financial Proposal
- Completed M/WBE forms (Attachment 16) or proof of M/WBE certified status included with the Financial Proposal.

# Attachment 7

## NYS Early Intervention Mediation Services Proposal Transmittal Letter

Enclose this letter with the Technical Proposal

I attest to the following bid requirements:

The bidding entity is a not-for-profit entity that has a professional relationship with, and is currently authorized by the state-wide system of Community Dispute Resolution Centers (CDRCs), or has authorization at the time of bid to act on behalf of the CDRCs (the winning bidder must maintain such authorization for the duration of the contract period).

**Circle one:    Yes      No**

---

The bidding entity can begin implementing the project immediately upon contract execution.

**Circle one:    Yes      No**

---

The bidding entity has a minimum of five years of successful work experience coordinating mediation services. Evidence of this experience is demonstrated in the enclosed proposal.

**Circle one:    Yes      No**

---

Does the bidding entity have a business relationship(s) and/or ownership interest that may represent a potential conflict of interest for the bidder as described by the Conflict of Interest specifications in Section C.3.i. of the RFP\*?

**Circle one:    Yes      No**

If yes, please attach to this Transmittal Letter a description of all such relationships with a brief narrative of how the potential conflict of interest and/or the disclosure of confidential information relating to this contract will be avoided.

---

*\*Answering yes to the above question will not automatically disqualify the bidder. Each business relationship detailed will be reviewed to determine if a conflict of interest exists that would prohibit the Department from awarding the contract to the bidder.*

Name of Bidder ( <i>Legal name as it would appear on a contract</i> )	
<b>Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:</b>	
Printed Name ( <i>First, Last</i> ):	Title:
Telephone number:	Fax number:
E-mail:	
<b>(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:</b>	
Printed Name ( <i>First, Last</i> ):	Title:
<b>Signature of Bidder or Authorized Representative</b>	<b>Date:</b>





**ATTACHMENT 9 – Vendor Responsibility Attestation**

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

**Choose one:**

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

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

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

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

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

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

## **ATTACHMENT 10 – NYS Department of Health M/WBE Procurement Forms**

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

### **Submitted with Bid:**

M/WBE Form#1: Bidder's M/WBE Utilization Plan

M/WBE Form#2: M/WBE Waiver Request

M/WBE Form#4: M/WBE Staffing Plan

M/WBE Form#5: Equal Employment Policy Statement - Sample

### **Submitted by Successful Bidder Only:**

M/WBE Form#3: QUARTERLY UPDATE - M/WBE CONTRACTOR COMPLIANCE & PAYMENT  
Report

M/WBE Form#6: M/WBE Workforce Employment Utilization Report

New York State Department of Health

**BIDDER/CONTRACTOR M/WBE UTILIZATION PLAN**

<b>Bidder/Contractor Name:</b>	
<b>Vendor ID:</b>	<b>Telephone No.</b>
<b>RFP/Contract Title: Family Initiative Coordination Services Project</b>	<b>RFP/Contract No. 1112160327</b>

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

--

**PROJECTED M/WBE USAGE**

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

**New York State Department of Health  
 BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN  
 MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION**

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

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

**New York State Department of Health  
 BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN  
 WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION**

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

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

**- M/WBE Form #2 -  
New York State Department of Health**

**M/WBE UTILIZATION WAIVER REQUEST**

<b>Bidder/Contractor Name:</b>	
<b>Vendor ID:</b>	<b>Telephone No.</b>
<b>RFP/Contract Title: Family Initiative Coordination Services Project</b>	<b>RFP/Contract No. 1112160327</b>

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

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**Include attachments below to evidence good faith efforts:**

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

**Section 4: Signature and Contact Information**

By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Submitted by : \_\_\_\_\_ Title: \_\_\_\_\_

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

**New York State Department of Health**  
**QUARTERLY UPDATE**  
**M/WBE CONTRACTOR COMPLIANCE & PAYMENT REPORT**

<b>Contractor Name:</b>	
<b>Contract Title:</b>	<b>Contract No.</b>

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

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

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

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

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

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

Submitted by : \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

## New York State Department of Health M/WBE STAFFING PLAN

Check applicable categories:  Project Staff       Consultants  
 Subcontractors

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

Address \_\_\_\_\_

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

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

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

\_\_\_\_\_  
Date

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

**M/WBE AND EEO POLICY STATEMENT**

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

**M/WBE**

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

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

**EEO**

national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

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

\_\_\_\_\_  
Name & Title

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

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

**New York State Department of Health  
WORKFORCE EMPLOYMENT UTILIZATION REPORT**

Check applicable categories:     Project Staff         Consultants  
     Subcontractors

Contractor Name \_\_\_\_\_ Contract # \_\_\_\_\_

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

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

Explain variances from original staffing plan submitted in the space below:

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

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

\_\_\_\_\_  
Date

**Attachment 11**

SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address): .

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE:12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:

TO:

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

FUNDING AMOUNT FOR CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

MUNICIPALITY NO. (if applicable):

STATUS:

CONTRACTOR IS ( ) IS NOT ( ) A SECTARIAN ENTITY

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

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

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

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

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



STATE OF NEW YORK  
AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment:
  - .
  - .
- B. Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-486-1255. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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

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

### III. Term of Contract

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

### IV. Proof of Coverage

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

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
  - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - 2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
  - 3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.
  
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
  - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - 2. DB-120.1 – Certificate of Disability Benefits Insurance OR
  - 3. DB-155 – Certificate of Disability Benefits Self-Insurance

V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
  
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the

time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be

sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements

thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all

attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

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

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

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

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

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

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

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby

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

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

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

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

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

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

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

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

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

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

document these efforts and to provide said documentation to the State upon request; and

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

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

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

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

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

**Agency Code 12000  
APPENDIX X**

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

Amendment Number X-\_\_\_\_\_

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

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

- \_\_\_\_\_ Modifies the contract period at no additional cost
- \_\_\_\_\_ Modifies the contract period at additional cost
- \_\_\_\_\_ Modifies the budget or payment terms
- \_\_\_\_\_ Modifies the work plan or deliverables
- \_\_\_\_\_ Replaces appendix(es) \_\_\_\_\_ with the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Adds the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Other: (describe) \_\_\_\_\_

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

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

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

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

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

\$ \_\_\_\_\_ From \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_.

This will result in new contract terms of:

\$ \_\_\_\_\_ From \_\_\_\_ / \_\_\_\_ / \_\_\_\_ to \_\_\_\_ / \_\_\_\_ / \_\_\_\_.  
(All years thus far combined) (Initial start date) (Amendment end date)



## APPENDIX D GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that all specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specifications, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, e-mail, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department, and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable, and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowance or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. Non-Collusive Bidding By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
- a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
  - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
  - c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

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

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.

- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed for use in the application software provided to the Department as a part of this contract.
- M. Technology Purchases Notification --The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
  2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
  3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.
- N. Date/Time Warranty
1. Definitions: For the purposes of this warranty, the following definitions apply:  
  
"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.  
  
"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is : (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.
  2. Date/Time Warranty Statement  
  
Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.  
  
Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.  
  
This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.
- O. No Subcontracting Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- P. Superintendence by Contractor The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.
- Q. Sufficiency of Personnel and Equipment If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

- R. Experience Requirements The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.
- S. Contract Amendments This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

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

T. Provisions Upon Default

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

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

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

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

W. 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 whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is

normally possessed by a prudent person in the ordinary course of business dealings.

- i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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.

AA. Provision Related to Consultant Disclosure Legislation

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

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

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

or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

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

December, 2011

## Appendix H

for CONTRACTOR that uses or discloses individually identifiable health information on behalf of a New York State Department of Health HIPAA-Covered Program

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

- F. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
- G. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
- H. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- I. 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. Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
- K. Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.

### III. Permitted Uses and Disclosures by Business Associate

- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
- B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
- C. Business Associate may disclose Protected Health Information as Required By Law.

### IV. Term and Termination

- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by

Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.

- B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.
- C. Effect of Termination.
  - 1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - 2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this AGREEMENT to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided,

however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

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

## **Appendix G**

### **NOTICES**

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

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

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

#### **State of New York Department of Health**

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

#### **[Insert Contractor Name]**

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this AGREEMENT by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this AGREEMENT. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

## APPENDIX M

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

#### **I. General Provisions**

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

#### **II. Contract Goals**

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

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

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

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

### **III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

- B. Contractor shall comply with the following provisions of Article 15-A:

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

- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

#### C. Form #4 - Staffing Plan

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

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

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

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

#### **IV. MWBE Utilization Plan**

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

#### **V. Waivers**

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

#### **VI. Quarterly MWBE Contractor Compliance Report**

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

term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

## **VII. Liquidated Damages - MWBE Participation**

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