
NEW YORK STATE DEPARTMENT OF HEALTH

Office of Health Insurance Programs
Division of Finance and Rate Setting
Bureau of HCRA Operations and Financial Analysis

A Request for Proposals for Performance Audits to Assess Payor and Provider Compliance with HCRA Regulations

FAU No: 1301311116

Schedule of Key Events

RFP Release Date.....April 3, 2013

Written Questions Due.....3:00pm ET April 15, 2013

Response to Written Questions.....on or about April 29, 2013

Proposal Due Date.....3:00pm ET May 15, 2013

Contract Start Date (Anticipated).....August 1, 2013

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 Contact for this RFP:

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:

- Submission of Written Questions
- Submission of Written Proposals
- Debriefings
- Negotiation of Contract Terms after Award

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For further information regarding these statutory provisions, see the Lobbying Statute summary in Section F.15 of this solicitation.

List of Acronyms and Abbreviations

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

AG	New York State Attorney General
BHOFA	Bureau of HCRA Operations and Financial Analysis
Contractor	Successful bidder
Department	New York State Department of Health
DTC	Diagnostic and Treatment Center
DTF	New York State Department of Taxation and Finance
HCRA	New York Health Care Reform Act
M/WBE	Minority/Women Business Enterprise
NYS	New York State
OHIP	Office of Health Insurance Programs, NYS Department of Health
OPA	Office of Pool Administration
OSC	New York State Office of the State Comptroller
PEP	Professional Education Pool
PHL	New York State Public Health Law
RFP	Request for Proposals
State	New York State
TPA	Third Party Administrator

TABLE OF CONTENTS

A.	INTRODUCTION	1
B.	BACKGROUND	1
	B.1. Overview of Electing Third Party Obligations	3
	B.2. Overview of Provider Obligations	5
	B.3. Enforcement of Electing Payor and Provider Obligations	6
	B.4. HCRA Correspondence and Supported Listings	6
C.	DETAILED SPECIFICATIONS	7
	C.1. Project Goals and Objective.....	7
	C.2. Scope of Work	7
	C.2.a Performance Standards	7
	C.2.b. Staffing Requirements	8
	C.2.c. Full Audit Protocols	8
	C.2.d. Audit Schedule/Tasks/Deliverables/Reporting Requirements	9
	C.2.e. General Contractor Duties	10
	C.3. Conflicts of Interest	12
D.	PROPOSAL REQUIREMENTS	13
	D.1. Proposal Format/Content.....	13
	D.2. Technical Proposal	13
	D.2.a. Transmittal Letter	14
	D.2.b. Table of Contents.....	15
	D.2.c. Organization and Personnel.....	15
	D.2.d. Work Plan	18
	D.3. Cost Proposal	19
E.	METHOD OF AWARD	20
	E.1. Vendor Selection.....	20
	E.1.a Technical Proposal Scoring Criteria.....	20
	E.1.b Cost Proposal Scoring Criteria	21
	E.1.c Total Combined Score.....	22
	E.2. Notification of Award	22

TABLE OF CONTENTS

F. ADMINISTRATIVE	22
F.1. Eligibility	22
F.2. Issuing Agency	22
F.3. Inquiries	23
F.4. Submission of Proposals	23
F.5. Reserved Rights	24
F.6. Payment	25
F.7. Out-of-State Travel	27
F.8. Testify at Article 78 or Other Court Proceedings	27
F.9. Review of Deliverables	27
F.10. Term of Contract	28
F.11. Debriefing	29
F.12. Protest Procedures	29
F.13. Vendor Responsibility Questionnaire	29
F.14. State Consultant Services Reporting	29
F.15. Lobbying Statute	30
F.16. Accessibility of State Agency Web-based Intranet and Internet Information and Applications	31
F.17. Information Security Breach and Notification Act	31
F.18. New York State Tax Law Section 5-a	32
F.19. Piggybacking	33
F.20. M/WBE Utilization Plan for Subcontracting and Purchasing	33
G. APPENDICES	33
H. LIST OF ATTACHMENTS	34

A. INTRODUCTION

This Request For Proposal (RFP) invites bids from eligible organizations interested in conducting audits to determine payor and provider compliance with requirements of the Health Care Reform Act (HCRA) as set forth in § 2807-c, 2807-j, 2807-s, and 2807-t of New York State's Public Health Law (PHL). The selected contractor will be required to perform all of the activities described in this RFP, the contractor's proposal, and the resultant contract. Such activities shall include, but are not limited to, conducting onsite performance audits, summarizing audit findings, conducting exit conferences, creating audit reports, and testifying to fact at judicial proceedings.

The selected contractor will be required to perform performance audit services to organizations located throughout the United States. Approximately 50,000 payors and third party administrators (TPA) of health services payments, as well as approximately 1,000 health care providers are potentially subject to such audits. Affected payors include third party insurers, health benefit plans, and self-funded plans that have elected to pay statutorily authorized surcharges and assessments directly to the Department of Health's (Department) Office of Pool Administration (OPA). Affected providers include New York State certified Article 28 general hospitals, certified Article 28 diagnostic and treatment centers (D&TCs) providing a comprehensive range of primary health care services, and, certified Article 28 D&TCs providing ambulatory surgical services.

The sixty (60) month contract term is expected to run from August 1, 2013 through July 31, 2018, subject to the availability of sufficient funding, successful contractor performance, and approvals from the New York State Attorney General (AG) and the Office of the State Comptroller (OSC).

Independent Certified Public Accounting (CPA) Firms licensed in New York State with a minimum of five years healthcare reporting experience, preferably with healthcare insurers and healthcare providers (i.e. hospitals, D&TC's, and Ambulatory Surgery Centers) may submit a proposal in response to this RFP. Preference will be given to those with prior HCRA or similar audit experience.

B. BACKGROUND

New York State's enactment of Chapter 639 of the Laws of 1996, otherwise known as the New York Health Care Reform Act of 1996 (HCRA), substantially deregulated the State's inpatient hospital reimbursement system. It also authorized a series of payor and provider surcharges and assessments which fund a broad array of health care initiatives.

Effective January 1, 1997, previously regulated non-Medicare inpatient hospital payors (including corporations organized and operating in accordance with Article 43 of the Insurance Law, organizations operating in accordance with the provisions of Article 44 of the PHL (HMOs), self-funded health benefit plans, and licensed commercial health insurers) are authorized to negotiate inpatient reimbursement rates for payment of services rendered by New York State certified general hospitals. Regulated hospital

inpatient rates for payments made by the New York State Medicaid Program and other State governmental units (including local government payments made for correctional inmates), and those made under the State's Workers' Compensation Law, the State's Comprehensive Motor Vehicle Insurance Reparations Act ("no-fault"), the State's Volunteer Fire Fighters' Benefit Law and the State's Ambulance Workers' Benefit Law are still maintained by the State.

HCRA Surcharge Rates

HCRA further required that non-Medicare payments made for certain specified health care services be subject to surcharges, which are collected and distributed by the State to subsidize indigent care and other health care related initiatives. Known as the Medically Indigent/Health Care Initiatives surcharge, the actual percentage amount varies, as well as whose obligation it is to pay the State (electing payors or HCRA providers).

For electing payors, surcharges apply to patient services payments made to HCRA designated providers as described above.

The surcharge percentage rates are as follows for affected health services payments when:

- Made by third party payors, as defined in PHL §2807-j, who have elected to pay their HCRA surcharge obligations directly to the State's OPA, either monthly or annually, rather than paying HCRA providers:
 - 8.18% for dates of service January 1, 1997 through June 30, 2003
 - 8.85% for dates of service July 1, 2003, through December 31, 2005
 - 8.95% for dates of service January 1, 2006 through March 31, 2009
 - 9.63% for dates of service from April 1, 2009 to present

In addition to this obligation, affected electing payors who provide inpatient coverage, are required to fund the Professional Education Pool (PEP) through a covered lives assessment for their New York State resident subscribers/plan participants, payable to the State's OPA, either monthly or annually. Covered lives assessment rates are based on one of eight regions of the State in which the primary insured resides, and whether individual or family unit coverage is provided. Covered lives assessment rates vary from year to year.

The surcharge rates are as follows for affected health services payments when:

- Made for State Medicaid beneficiaries and other clients of State operated governmental units :

- 5.98% for dates of service January 1, 1997 through June 30, 2003
- 6.47% for dates of service July 1, 2003, through December 31, 2005
- 6.54% for dates of service January 1, 2006, through March 31, 2009
- 7.04% for dates of service from April 1, 2009 to present

Designated HCRA providers are also required to remit surcharge payments to the State. Surcharges are due on various receipts, including from third party payors that did not voluntarily elect to make direct payments to the OPA (aka “non-electors”), receipts from beneficiary co-insurance and deductible payments, and receipts from self-pay collections.

The surcharge rates are as follows for affected health services receipts when:

- Received by third party payors, as defined in PHL §2807-j, who have *not* elected to pay their HCRA surcharge obligations directly to the State’s OPA:
 - 32.18% for dates of service January 1, 1997 through June 30, 2003
 - 34.82% for dates of service July 1, 2003, through December 31, 2005
 - 35.21% for dates of service January 1, 2006, through March 31, 2009
 - 37.90% for dates of service from April 1, 2009 to present

The surcharge rates are as follows for affected health services receipts when:

- Received by self-pay patients and “unspecified” payors
 - 8.18% for dates of service January 1, 1997 through June 30, 2003
 - 8.85% for dates of service July 1, 2003, through December 31, 2005
 - 8.95% for dates of service January 1, 2006 through March 31, 2009
 - 9.63% for dates of service from April 1, 2009 to present

1. Overview of Electing Third Party Payor Obligations

Third party payors are required to file an election application with the Department’s OPA if they choose to voluntarily elect to meet their Medically Indigent/Health Care Initiatives and PEP obligations through direct payments to the OPA. A TPA, acting in an administrative services capacity for claims processing and payment of an affected insurer or self funded benefits plan, may also elect to make direct payments to the Department’s OPA on behalf of their

electing clients.

An electing payor's monthly or annual Medically Indigent/Health Care Initiatives surcharge obligation is calculated by applying the appropriate payor specific surcharge percentage to all non-exempt patient care services payments made to designated providers of services. The surcharge applies to all monies paid to designated providers of services, including capitated payments allocable to the particular services, less refunds, for, or on account of discharges occurring, visits made, or services performed on or after January 1, 1997, or contracted service obligations for periods on or after January 1, 1997. Such surcharge payments must be segregated by service year and provider classification.

Electing "specified third party payors" as defined in PHL §2807-s(1)(b), are also obligated to make assessment payments into the PEP, pursuant to PHL §2807-t, for each primary plan participant who resides in New York State for which inpatient coverage is provided. A payor's monthly or annual PEP covered lives assessment is calculated by applying the appropriate regional covered lives assessment rate to the number of individual and family unit covered lives included on the payor's membership rolls for all or any part of a month in which they are electors and provide inpatient coverage. Regional covered lives assessment rates are assigned based on the type of coverage (i.e., individual or family unit) and the plan participant's county of residence.

For periods prior to April 1, 2009: excluded from this calculation are payments from electing State licensed capitated inpatient insurance plans rendered to State Medicaid enrollees, and insurers (i.e., commercial insurers, Blue Cross Plans and HMOs) not licensed or authorized under New York State statutes that write accident and health insurance with an inpatient component, on an expense incurred basis.

Effective April 1, 2009, payments from all out of state licensed HMOs and insurers authorized to write accident and health insurance and whose policy provides inpatient coverage on an expense incurred basis, that previously were exempt as described above, are now subject to a covered lives assessment for their insureds residing in the State.

Public Goods Pool reports, filed by electing payors and TPAs, are filed electronically through a secure website (www.hrcapools.org) and require the entity to access via a provided user id and password. Mandates for electronic filing, rather than paper submission, have been in effect beginning in July 2004. However, hard copy reports can be viewed for content by accessing the Department's HCRA website: www.health.ny.gov/regulations/hcra/ under the menu selection entitled "Forms and Instructions."

2. Overview of Provider Obligations

Designated providers are responsible for remitting their Medically Indigent/Health

Care Initiatives surcharge obligations, on certain patient services revenue, to the Department's OPA on a monthly basis. Such payments must be segregated by service year and classification type.

A provider's monthly surcharge obligation amount is calculated by applying payor specific surcharge percentages to revenue received for surchargeable patient care services. Although reported, but excluded from the calculation, are revenues received from payors electing to make public goods payments directly to the OPA, certain exempt payors (i.e., Medicare, FEHBA, etc.), and payments made directly from the State Medicaid program, including related beneficiary copayments.

Regional Graduate Medical Expense Percentage

Certified Article 28 general hospitals are also responsible for remitting their PEP funding obligations to the Department's OPA on a monthly basis. A general hospital's obligation amount is calculated by applying its region's Alternative Per Unit of Payment Surcharge percentage (<http://www.health.ny.gov/regulations/hcra/gmecl.htm>) against inpatient revenue received from non-electing specified third party payors of inpatient services as described in PHL §2807-s(1)(b).

For periods prior to April 1, 2009: excluded from this calculation is revenue received from: electing specified third party payors who pay their PEP obligation directly through covered lives assessments, State licensed capitated insurance plans for payments made for inpatient services rendered to State Medicaid enrollees, insurers (i.e., commercial insurers, Blue Cross Plans and HMOs) not licensed or authorized under New York State statutes.

Effective April 1, 2009, inpatient revenue received from all out of state licensed HMOs and insurers authorized to write accident and health insurance and whose policy provides inpatient coverage on an expense incurred basis, that previously were exempt as described above, is now subject to the PEP surcharges.

These described obligations are due from providers on all affected monies received, less refunds, for, or on account of discharges occurring, visits made, and services performed on or after January 1, 1997, as well as capitation payments allocable to affected services for contracted service obligations for periods on or after January 1, 1997.

Public Goods Pool reports, filed by HCRA designated providers, are filed electronically through a secure website (www.hrcapools.org) and require the provider to access via a provided user id and password. Mandates for electronic filing, rather than paper submission, have been in effect for periods January 2005 and after. However, hard copy reports can be viewed for content by accessing the Department's HCRA website: www.health.ny.gov/regulations/hcra/ under the menu selection entitled "Forms and Instructions."

1% Statewide Assessment

In addition, general hospitals are obligated to report and pay a monthly one-percent assessment (1% Statewide Assessment) on net inpatient service revenues received for discharges occurring on or after January 1, 1997 in accordance with PHL §2807-c (18). The accuracy of the provider's calculation of assessments paid will also be verified as part of the provider reviews described in this RFP.

1% Statewide Assessment reports, filed by Article 28 hospitals, are filed electronically through a secure website www.hrcapools.org and require the provider to access via a provided user id and password. Mandates for electronic filing, rather than paper submission, have been in effect for periods January 2005 and after. However, hard copy reports can be viewed for content by accessing the Department's HCRA website: www.health.ny.gov/regulations/hcra/ under the menu selection entitled "Forms and Instructions."

3. Enforcement of Electing Payor and Provider Obligations

HCRA established a process by which the Department shall determine and impose interest and penalty provisions on providers and payors whose payments to the OPA are untimely or deficient. For providers, the Department is also authorized to withhold and/or intercept Medicaid and other payments in satisfaction of their public goods pool financing obligations. In the case of payor delinquencies, the Department is further authorized to revoke a payor's election to make payments directly to the OPA. They would then be obligated, when billed, to pay providers at the higher surcharge rates, currently set at 37.90%, and if applicable, an additional GME Alternative Per Unit of Payment surcharges percentage on inpatient claims.

The Department is authorized to refer payors and providers to the AG's office for outstanding liabilities due. The law also authorizes the Department to assess civil penalties on electing payors and providers that fail to file reports within specified time frames or fail to produce data or documentation requested in the course of an audit. If an electing payor or provider fails to produce data or documentation requested in furtherance of an audit, for a month to which an allowance applies, the Commissioner may estimate, based on available financial and statistical data as determined by the Commissioner, the amount due for such month.

4. HCRA Correspondence and Supported Listings

The Department's HCRA website is a valuable resource for additional information concerning HCRA. Available on the site are correspondence concerning HCRA policies and procedures, interpretations of assessable payments, billing examples, applications for direct pool payment election, payor and provider monthly pool reporting forms, lists of electing payors and affected designated providers of

services, and a list of foreign countries with National Healthcare. It is important to note that although the Provider List may be one of the tools that electing payors utilize to identify claims from HCRA designated providers, the Department has advised payors and providers that they should consider communicating their respective HCRA status through their billing and remittances processes because: 1) the Provider List does not distinguish surchargeable services from non-surchargeable services; 2) the lists may not include all designated provider satellite branches and subsidiaries; and 3) the lists do not identify designated provider billing arrangements with non-designated providers billing services. The website address for HCRA information is: www.health.ny.gov/regulations/hcra/.

C. DETAILED SPECIFICATIONS

This section of the RFP delineates and defines all the duties of the contractor regarding performance audits of surcharge and/or assessment payments to the HCRA pools. Each bidder must include a plan to carry out all noted required functions. The audit activities are considered minimum requirements and the bidder may propose additional activities as long as they are consistent with the Department's stated goals and objectives.

1. Project Goals and Objectives

The Department's overall goal is to ensure that affected organizations comply with their surcharge and assessment obligations established by law. Objectives to achieve this goal include: a) having an independent capability to determine an affected payor's and provider's actual surcharge and assessment obligations as set forth in §2807-c, 2807-j, 2807-s and 2807-t of the PHL, and b) an ability to quantify any potential payor and provider surcharge and assessment underpayments or overpayments that remain.

2. Scope of Work

- a. Performance Standards
 - i. The Contractor shall conduct, in the reasonable judgment of the State, complete, accurate and timely audits.
 - ii. The Contractor shall conduct audits in accordance with the audit protocols and audit schedule set forth in the RFP and the contractor's proposal as modified or supplemented by the terms of this Agreement.

b. Staffing Requirements

The Contractor will assume responsibility for organizing and training sufficient staff to conduct assigned performance audits. The contractor will also be responsible for coordinating and managing the on-going audits. To accomplish this, the contractor shall:

- i. Assign a project coordinator who possesses strong management skills necessary to coordinate audit activities, analyze data, prepare reports and respond to the Department's management information needs.

The project coordinator should be the sole liaison between the Department and the contractor. The Department should be able to direct all questions, audit targets and other correspondence to one individual. This individual is expected to be available to respond to the Department's management information needs on a daily basis via telephone and/or E-mail and to coordinate bi-weekly audit status meetings to apprise the Department of audit issues and status.

- ii. Assign audit teams, consisting of a minimum of two staff each, who possess strong accounting and auditing experience. Additionally, at least one of the team members shall have training and experience in the review of electronic claims payment/remittance processing systems.
- iii. Provide sufficient additional management and administrative support staff necessary to organize, prepare and carry out all administrative tasks associated with conducting the above-described audits and submitting resultant audit reports.
- iv. The Contractor shall maintain the staffing levels and personnel as provided in the Contractor's proposal, except as approved by the State or caused by resignations or other situations which, in the State's judgment, are beyond the Contractor's control.

c. Full Audit Protocols

Using protocols set forth by the Department for this purpose (Attachments 1 and 2), the Contractor will conduct audits of selected electing payors and designated providers to establish compliance with HCRA pool surcharge and assessment payment requirements and to determine the amount that HCRA pools were underpaid/overpaid due to noted compliance deficiencies. The Contractor may propose alternate

schedules/protocols that are consistent with the stated goals and objectives for these audits.

d. Audit Schedule/Tasks/Deliverables/Reporting Requirements

- i. The Contractor shall complete up to thirty (30) audits annually, and the Contractor and the Department **agree that payor and provider audit assignments shall not be** limited to any specific ratio of payor versus provider audits.
- ii. The Contractor will be responsible for following the steps and completing the tasks and deliverables specified in the audit schedules provided in Attachments 1 and 2.
- iii. The Contractor will be responsible for providing the Department with preliminary results, draft and final audit reports. The Contractor shall timely submit all required reports (Status Reports, Preliminary Results Document, Draft and Final Audit Reports) in accordance with the schedule to be determined by the State. Audit Reports should contain all deliverables set forth by the State in accordance with Attachments 1, 2, 3 and 4, as appropriate, of this Agreement. Draft and Final audit reports must contain the original signature of the Partner in Charge or other duly authorized person who is a New York State Certified Public Accountant. The Department will prescribe the content and format of such reports.
- iv. The Contractor will be responsible for providing the Department with reports of audit status as prescribed by the Department.
- v. The Contractor shall submit reports, which in the reasonable judgment of the State, are fully supported by work papers, which are neat, organized, accurate and signed and dated by both the preparer and the preparer's supervisor.
- vi. The Contractor shall maintain work papers that, in the reasonable judgment of the State, contain sufficient detail so as to allow a conclusion to be drawn without oral explanation and/or clarification being required by the preparer.
- vii. The Contractor shall maintain work papers and evidence containing sufficient information to enable an experienced auditor, having no previous connection with the audit, to validate the auditor's significant conclusions and judgments. Such evidence shall include, but not be limited to,

documentation, analyses, and data either received from the auditee and/or generated by the contractor and/or obtained from other sources.

- viii. The Department shall be the owner of the work papers/evidence. The Contractor will retain the work papers/evidence for the balance of the calendar year in which they were generated/acquired and for six (6) additional years thereafter, and will provide the Department timely access to the work papers/evidence as requested.
 - ix. The Contractor shall timely submit status reports apprising the State of the Contractor's audit progress, in accordance with the schedule to be determine by the State.
 - x. The Contractor shall assume responsibility for providing and ensuring the compatibility of all electronic equipment and resource needs.
- e. General Contractor Duties

It shall be the obligation of the Contractor to:

- i. Assume primary responsibility for all services offered in the Contractor's proposal, whether or not the Contractor directly provides them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters.
- ii. Assume complete responsibility for the cost and timely completion of all activities and duties required of the Contractor by this Agreement and carrying out those activities and duties in a competent and timely manner. **All instate travel is included in the price.**
- iii. Notify the State in writing of any changes in the persons designated to bind the Contractor.
- iv. Maintain the level of liaison and cooperation with the State necessary for proper performance of all contractual responsibilities.
- v. Maintain senior management as identified in the proposal unless granted specific written permission to change senior management by the State, which permission shall not be unreasonably withheld.

- vi. Maintain the levels of staffing and personnel expertise as provided in the Contractor's proposal, except as approved by the State or caused by resignations or other situations beyond the control of the Contractor.
- vii. Agree that no aspect of Contractor's performance under this Agreement will be contingent upon State personnel or the availability of State resources with the exception of such proposed actions of the Contractor which are specifically identified in this Agreement as requiring State approval, policy decisions, policy approvals, exceptions stated in this Agreement or which require the normal cooperation which would be expected in such a contractual relationship.
- viii. Submit in writing to the State, within three (3) days of learning of any situation which can reasonably be expected to adversely affect the operation of the performance audit function, a description of the situation including a recommendation for resolution whenever possible.
- ix. Perform the responsibilities and meet the milestones, deliverables and reporting requirements specified in this Agreement.
- x. Furnish, or make available, accounts, records, or other information pertaining solely to this Agreement as required to substantiate any estimate, expenditures or reports as requested by the State or the Office of the State Comptroller, as may be necessary for auditing purposes regarding this Agreement, or to verify that expenditures were made only for the purposes authorized by this Agreement.
- xi. Accept responsibility for compensating the State for any exceptions, for payments made under this Agreement, which are revealed on audit by the Office of the State Comptroller or another State agency, after due process and an opportunity to be heard has been afforded.
- xii. Provide copy of audit work papers and related material request by the State within 10 business days of written request. If audit work papers are requested for more than two audits, within 10 business days, then the State and Contractor will mutually agree upon a delivery timeframe, not greater than 60 business days.

The Contractor shall recognize and agree that the State may require the Contractor to perform performance audit related tasks, which although

within the general scope of work required by this Agreement, are not specifically listed in this Agreement.

The Contractor shall implement changes within the scope of work of this Agreement, in accordance with a State approved schedule, including changes in policy, regulation, statute, or judicial interpretation.

The Contractor shall recognize and agree that any and all work performed outside the scope of this Agreement or without consent of the State shall be deemed by the State to be gratuitous and not subject to charge by the Contractor.

The Contractor and the State shall work together to refine the scope of the work for the audit process. The Contractor will still be required to provide recommendations to the auditee as to what needs to be done to become compliant with the State requirements set forth in the HCRA regulation.

3. Conflicts of Interest

Bidders (or any subcontractor) must disclose current obligations or contractual relationships that may be interpreted as a conflict of interest with respect to the contract arising out of this RFP.

The contractor will be precluded from performing HCRA compliance testing involving an organization that constitutes a conflict of interest under the firm's corporate policies and applicable professional standards.

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 Contractor shall immediately notify the State in writing if, during the term of this Agreement and any extension thereof, the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest. The State reserves the right to make the final determination regarding actual or potential conflicts of interest.

D. PROPOSAL REQUIREMENTS

1. Proposal Format/Content

Each bidder's proposal should be submitted as two separately sealed volumes. Volume I should contain the bidder's technical proposal and Volume II should contain the bidder's cost proposal. No financial information should be in the technical proposal.

Formatting should be as follows:

- Each page of the proposal should be numbered consecutively from the beginning of the proposal through all appended material.

- Narrative should be double spaced, using a 12 pitch font or larger, with minimum one (1) inch margins all around.
- Proposal should be double-sided on white 8 ½ x 11-inch paper.
- Proposals should be submitted in 3-ring binders

Failure to comply may result in disqualification of the vendor from consideration for award.

2. Technical Proposal

To promote uniformity of preparation and to facilitate review, the technical proposal should include the following information, in the order prescribed below.

The Technical Proposal should include, at a minimum, the following four components:

- Transmittal Letter;
- Table of Contents;
- Description of Organization and Personnel;
- Work Plan
- Vendor Responsibility Attestation and related materials as required (See Section F.13 and Attachment 9)

a. Transmittal Letter

Do not include any information regarding the cost of the proposal in the Transmittal Letter. The Transmittal Letter should be submitted on the official business letterhead and signed in ink by an official of the bidding organization. The signatory should be authorized to bind the organization to the provisions of the RFP and Proposal. A template for the Transmittal Letter is provided in Attachment 5.

The Transmittal Letter will be evaluated as part of the Performance Evaluation screening. Failure to comply may result in disqualification of the vendor from consideration for award. The Transmittal Letter should include:

1. The Bidder's complete name and address, including the name, mailing address, email address, fax number and telephone number for both the authorized signatory and the person the Department should contact regarding the proposal;
2. A statement describing the legal structure of the entity submitting the proposal;
3. A statement that the bidder accepts the contract terms and conditions contained in this RFP including any exhibits and attachments;
4. A statement confirming that the bidder has received and acknowledged all Department amendments to the RFP, as may be amended;
5. Bidder provides a statement confirming that the bidder is an Independent Certified Public Accounting (CPA) Firm licensed in New York State with a minimum of five years healthcare reporting experience, preferably with healthcare insurers and healthcare providers (i.e. hospitals, D&TC's, and Ambulatory Surgery Centers) may submit a proposal in response to this RFP;
6. A statement that the bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;
7. A statement that the proposal of the bidder and all provisions of the proposal will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals;
8. Bidder certifies that either there is no conflict of interest or that there are business relationships and/or ownership interests for the above named organization that may represent a conflict of interest for the organization as bidder, as described in the RFP Section C.3,

and attached to the letter is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided;

9. If a proposal is submitted which proposes to utilize the services of a subcontractor(s), the bidder should provide, in an appendix to the Transmittal Letter, a subcontractor summary for each listed subcontractor. An individual authorized to legally bind the subcontractor should sign that subcontractor's summary document and certify that the information provided is complete and accurate.

The summary document should contain the following information:

- a. Complete name of the subcontractor;
- b. Complete address of the subcontractor;
- c. A general description of the scope of work to be performed by the subcontractor;
- d. Percentage of work the subcontractor will be providing;
- e. A statement confirming that the subcontractor is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department; and
- f. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or handicap.

10. A statement confirming that the bidder has or will locate an office and key project staff in a single location within twelve (12) miles of the Capitol building in Albany, New York.

Failure to comply with these provisions may result in disqualification from the procurement process and/or withdrawal of a proposed contract award.

- b. Table of Contents
- c. Organization and Personnel

Bidders should provide, in relation to responsibilities set forth in Section C "Detailed Specifications" of this RFP and referenced attachments:

- i. A description of the bidder's organizational structure and background.

- ii. An organizational chart which clearly demonstrates how the organization intends to organize staff and management for this project.
- iii. A description of the bidder's experience in conducting health care payor and provider claims and financial performance audits similar in nature to the audits required by this RFP.

Experience related to audits of health care payor and provider activities, health care payor and provider auditing, auditing electronic claims processing and remittance systems, data management initiatives, and other relevant activities should also be provided.

The bidder's experience shall be evaluated based on how relevant this experience is to the scope of work to be performed in accordance with this RFP. Experience gained within the last five years should be included.

Letters of endorsement for relevant work experience required by this proposal should also be provided.

- iv. A description of the bidding organization's capacity to carry out the required audit activities on a timely basis and in a manner that allows for onsite activities to be carried out simultaneously, as necessary, to accommodate payors/providers and in accordance with the time frames set forth in the RFP.

Include a list of offices or locations that will be used to coordinate and carry out audit activities, conduct analysis and prepare data and management information reports.

- v. A description of the bidding organization's data processing and analytical capabilities including any technologies, special techniques, skills or abilities that the organization considers necessary to accomplish the goals and objectives of the HCRA performance audits.
- vi. List three largest (e.g., largest in claiming activity) audit projects the bidder has performed, within the past five (5) years, for a government, health care payor or provider organization, which are similar to the audits required by this RFP. For each of these projects:
 - a. Name of government entity/company.
 - b. Contract start/completion dates.

- c. Name, title and telephone number of the customer to contact for confirmation of the project performed, its scope and the bidder's quality of work.
 - d. Describe the project (e.g., audit type, project size, goals, scope, number of claims, level of effort) and any special technologies, techniques, skills or abilities that the bidding organization required to accomplish the project requirements.
 - e. Describe the educational background, specialized training, professional experience, and special qualifications of the project coordinator, team leaders, onsite audit team and analytical staff assigned to the project.

- vii. A listing of personnel who will conduct the audit program (i.e., credentials, title, affiliation with contractor, etc.) Specify how the personnel will be utilized and the percentage of time they will devote to this contract.

- viii. Description of the educational background, specialized training, professional experience, and special qualifications of the project coordinator, the project directors, team leaders and onsite audit/surveillance team and analytical staff assigned to the project.

Include a resume and two references for each staff person proposed for the project.

- ix. Description of the educational background, experience and special qualifications of consultants to be involved in the contract as well as those of any proposed subcontractor. The following information should be provided for each subcontractor:
 - A complete description of specific responsibilities to be undertaken by the subcontractor under this contract. Include the percentage of work and effort to be completed by the subcontractor under this contract.
 - A description of the subcontractor's experience performing the specific HCRA performance audit functions that they will be completing.
 - Three (3) business references that can demonstrate the subcontractor's experience in performing the specific HCRA performance audit functions that

they will be completing.

- A letter of commitment to undertake the specific functions required in this RFP which the subcontractor will be completing, signed by an authorized representative of the proposed subcontractor.
- x. A summary of training initiatives to ensure that all staff is appropriately trained and that training protocols provide for consistency among audit staff and the analysis of findings.
- d. Work Plan: Bidders are to develop and include in their proposal, a plan for implementing the audit activities and data responsibilities set forth in Section C “Detailed Specifications” of this RFP, and referenced attachments. The work plan should include at a minimum:
- i. Descriptions outlining the bidder's understanding of the HCRA performance audit project;
 - ii. Timeframes and tasks to be completed to ensure timely implementation of the HCRA performance audit project;
 - iii. Descriptions of the methods and procedures the bidder will implement to achieve the Department’s stated goals and objectives;
 - iv. Descriptions of statistical sampling methods to be utilized;
 - v. Descriptions of electronic data processing equipment to be utilized;
 - vi. Descriptions of all computer software to be utilized;
 - vii. Summary of existing audit plans currently being used by the bidder to test claims processing and remittance systems;
 - viii. Descriptions of alternative procedures to be utilized to determine compliance and calculate surcharge and assessment underpayments when an auditee fails to provide source data/documentation;
 - ix. Description of a Quality Control Plan for the work covered by this RFP;
 - x. Descriptions of the methods to be utilized to maintain the level of liaison and cooperation with the Department necessary for proper performance of all contractual responsibilities and to apprise the Department of audit issues and status; and

- xi. Schedule of deliverables based upon the projected workload outlined in Section C and referenced attachments, which detail the scope of work and number of audits to be conducted on an annual basis.

3. Cost Proposal

The bidder should submit a cost proposal separate from the technical proposal. The Cost Proposal should include:

- Cost Proposal Form (Attachment 6)
- Lobbying Form (See Section E.15 and Attachment 8)
- M/WBE Utilization Plan Form (See Section E.20 and Attachment 10)

The Cost Proposal form (Attachment 6) should be used for submission of bid pricing. Bidders must include prices for both contract periods on the cost form, as follows, for a total of eight prices:

- Per Audit Prices for Payor **and** Provider Audits:
 - Years 1, 2 and 3
 - Years 4 and 5
- Hourly Rate Prices for Testimony for Payor **and** Provider Audits:
 - Years 1, 2 and 3
 - Years 4 and 5

Audit prices are a fixed flat rate per audit and will include an audit period of two (2) to six (6) years. Please Note: The price paid per audit will be the same whether the audit covers two (2) years or six (6) years of data. The audit years will be assigned at the discretion of the Department.

Cost Proposals that do not include pricing for both contract periods will be disqualified.

The price submitted for years 4 and 5 must not exceed the price for years 1, 2, and 3 by more than 10%. Cost proposals submitted with prices for years 4 and 5 exceeding the years 1, 2 and 3 prices by more than 10% will be disqualified.

The Cost Proposal Form should be signed by an individual authorized to bind the organization to the prices specified and affirm that the proposal and all provisions of the offer price are to remain in effect for a minimum of three hundred sixty five (365) days from the proposal due date as shown on the cover page of this RFP.

The two original Cost Proposal Forms should be signed in ink; company stamps or electronic signatures are not acceptable.

E. METHOD OF AWARD

1. Vendor Selection

This section of the RFP sets forth the criteria to be used by the State for evaluation of the proposals submitted in response to this RFP. The objective of the evaluation is to select the bidder proposing the best value solution, which optimizes quality, cost and efficiency.

The technical proposals and cost proposals will be evaluated separately. Each proposal will receive a numerical score based on the values associated with the criteria used below. Points will be totaled for a final score of 100; the technical proposal being 70 points and the cost 30. The proposal awarded the most points will be awarded the contract.

At the discretion of the Department of Health, all bids may be rejected. The evaluation of the bids will include, but not be limited to the following considerations:

a. Technical Proposal Scoring Criteria (70 points)

Formula: $x/y*70$ – where:

x = raw score of proposal being scored

y = raw score of highest scored proposal

70 = total points available

i. Organization and Personnel Qualifications, Experience and Capacity

Bidders will be evaluated based on the organization's capacity to carry out the required audit activities on a timely basis and their ability to demonstrate prior experience in conducting audits similar in nature to the audits required by this RFP. Experience related to audits of providers of medical services and insurers of such services will also be considered.

Bidders will be evaluated based on the education, prior related experience, specialized training, and professional licenses and activities of the staff to be devoted to the project.

In the Department's evaluation of proposals, preference will be given to those with staffing proposals which include staff who have experience in conducting health care payor and provider claiming and financial performance audits similar in nature to the audits required by this RFP. Experience related to audits of health care payor and provider activities, health care payor and provider auditing, auditing electronic claims processing and remittance systems, data management initiatives, and other relevant activities will also be considered.

The bidder's proposal will be judged on the staffing plan provided to meet program goals and provide for continuity in staffing to promote consistency in audit activities and analysis of findings. The proposal will also be judged on the training initiatives set forth to ensure that all staff are appropriately trained and that training protocols provide for consistency among audit staff and for the analysis of findings.

ii. Understanding of Department Requirements

Bidders will be evaluated on how well they demonstrate an understanding of the scope and purpose of the various audits to be performed. The bidder will be expected to demonstrate knowledge of the environment in which the audits will take place including identification of issues and obstacles to implementing an effective and consistent audit program and proposed solutions.

iii. Technical Approaches

Bidders will be evaluated on how well they translate the audit goals and responsibilities contained in the RFP into an effective and efficient payor and provider audit program. The bidder's approach to data collection, analysis and reporting will be evaluated based on the goals and objectives set forth in the Scope of Work section of the RFP. Particular attention will be paid to the bidder's proposal for implementation of alternative procedures when audit data is not available. This includes related use criteria, methods, plans and procedures.

Bidders will also be evaluated based on their technological capabilities which shall be based on specific descriptions of the audit tools, hardware and software the firm will use for this project.

b. Cost Proposal Scoring Criteria (30 points)

Each bidder's cost proposal will be evaluated separately from the technical proposal. The basis for the cost proposal evaluation rankings will be the price offer received from each bidder. The total price offers will be ranked with the lowest cost bid of a responsible bidder awarded the weighted maximum total of points.

Formula: $x/y*30$ where:

x = bid price of lowest bid

y = bid price of proposal being scored

30 = total points available

c. Total Combined Score (100 points)

The technical and cost scores will be added together for a Total Combined Score. The proposal with the highest total score will be selected as the awardee.

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

2. Notification of Award

After evaluation and selection of the vendor, all bidders will be notified in writing of their selection or non-selection of their proposals. The name of the winning bidders(s) will be disclosed. Press releases pertaining to this project shall not be made without prior written approval by the State and then only in conjunction with the issuing office.

F. ADMINISTRATIVE

1. Eligibility

Independent Certified Public Accounting (CPA) Firms licensed in New York State with a minimum of five years healthcare reporting experience, preferably with healthcare insurers and healthcare providers (i.e., hospitals, D&TC's, and Ambulatory Surgery Centers) may submit a proposal in response to this RFP. Preference will be given to those with prior HCRA or similar audit experience. The selected contractor will be required to perform performance audit services in organizations located throughout the United States. The Contractor must locate its office and key project staff in a single location within twelve (12) miles of the Capitol building in Albany, New York. This will ensure that travel costs, resulting from routine status meetings between the Contractor and the Department, are kept to a minimum. Furthermore, it ensures that consistent security and confidentiality measures are implemented and monitored with regard to the personal and confidential information in the Contractor's custody.

2. Issuing Agency

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

3. Inquiries

Prospective bidders may submit questions relating to the RFP in writing by email to

the designated contact listed on page i of the RFP. To the degree possible, each inquiry should cite the RFP section and paragraph to which it refers. Questions must be received by the Department on or before 3:00pm Eastern Time on the date specified in the schedule of key events on the cover page of the RFP.

Prospective bidders should note that all clarification and exceptions, including those relating to the terms and conditions of the contract, are to be raised prior to the submission of a proposal.

This RFP is posted on the Department of Health's website at <http://www.health.ny.gov/funding>. Questions and answers, as well as any RFP modifications, will be posted on the Department of Health's website at <http://www.health.ny.gov/funding> by the date specified on the cover page of this RFP.

There will not be a bidder's conference in conjunction with this RFP.

4. Submission of Proposals

Interested bidders should submit two originals and ten copies in binder format (12 complete sets in all). As stated previously, each page of the proposal should be numbered consecutively from the beginning of the proposal through all appended material. Narrative should be double spaced, using an 12 pitch font or larger, with minimum one (1) inch margins all around, on standard white 8 ½ x 11 inch paper double-sided.

Original proposals should be marked as such. Where signatures are required, the original proposal materials should be signed in ink (electronic signatures are not acceptable).

The bidder should also submit an electronic copy in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only.

The 12 hardcopy sets and CD of the technical proposal should be packaged, labeled and sealed separately from the 12 hardcopy sets and CD of the cost proposal. If practical, the separate technical and cost packages should be mailed as one parcel clearly marked as stated below.

No electronic or email submissions will be accepted.

All copies must be received by the Department of Health no later than 3:00 p.m. (Eastern Time) by the date specified on the cover sheet of this RFP. In case of any discrepancy between the electronic and the hard copy documents the hard copy shall supersede.

Responses to this solicitation should be clearly marked ***"HCRA Performance Audit RFP Proposal Submission – FAU #130131116"*** and directed to:

Ms. Phyllis Stanton
New York State Department of Health
Division of Finance and Rate Setting
Bureau of HCRA Operations and Financial Analysis
Corning Tower [OCP-810]
Albany, NY 12237

It is the bidder's responsibility to see that bids are delivered to Suite 810 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 Suite 810 will not be considered.

1. The Lobbying Form (Attachment 8) should be filled out in its entirety.
2. The responsible corporate officer for contract negotiation should be listed. This document must be signed by the responsible corporate officer.
3. All evidence and documentation requested under Section D, Proposal Requirements should be provided at the time the proposal is submitted.

5. Reserved Rights

The Department of Health reserves the right to:

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of proposals;
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
7. Prior to the proposal due date, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the proposal due date, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. Change any of the scheduled dates;

10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the proposals received;
15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 365 days from the proposal due date; and
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

6. Payment

For each assigned audit, the State shall pay the Contractor up to fifty percent (50%) of the applicable fixed offer price upon the Contractor's completion in providing to the State the Preliminary Results Document and a submission of an invoice to the State and acceptance of such report and invoice by the State. The State shall pay the remaining balance of the applicable fixed offer price to the Contractor upon the submission of the Final Audit Report and an invoice by the Contractor and acceptance of such report and invoice by the State. An audit shall be deemed completed upon submission of the Final Audit Report and a submission of an invoice by the Contractor and acceptance of such report and invoice by the State. Payment will be based upon the rate in effect when the Audit Notification Letter is sent by DOH to the auditee. Payment shall be contingent upon full and proper performance, by the Contractor, of the audit activities specified in the RFP and the Contractor's proposal as modified or supplemented by the terms of this Agreement, and the Contractor's submission and the State's acceptance of the deliverables identified in the RFP, the Contractor's proposal, and this Agreement.

In the event the Contractor fails, in the reasonable judgment of the State, to properly perform in accordance with the performance standards, payment may be withheld by the State until such time as the State reasonably determines that the performance standards are met. If the performance standard in question is subsequently achieved or furnished as determined by the State, payment shall be released to the Contractor.

The Contractor shall submit certified invoices for audits completed, to the State's designated payment office:

HCRA Performance Audits
Attn: Mr. Roland Guilz, Director
New York State Department of Health
Division of Finance and Rate Setting
Bureau of HCRA Operations and Financial Analysis
Corning Tower [OCP-810]
Albany, NY 12237
(518) 474-1673

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 procedures and practices. The Contractor shall comply with the OSC's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.gov/epay/index.htm, by email at epunit@osc.ny.gov 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 OSC'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 New York State Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.gov/epay>.

Completed W-9 forms should be submitted to the following address: NYS Office of the State Comptroller, Bureau of Accounting Operations, Warrant & Payment Control Unit, 110 State Street, 9th Floor, Albany, NY 12236.

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

All contract payments to the Contractor shall cease, at the State's sole discretion, if the Contractor fails to submit to the State any Final Audit Report within thirty (30) calendar days of receipt of the State's comments on the associated Draft Audit Report, unless an extension is requested in writing by the Contractor and approved in writing by the State. All contract payments to the Contractor shall cease, at the State's sole discretion, if the Contractor fails to present testimony and/or evidence in legal proceedings required under this agreement within the State established timeframes. Contract payments to the Contractor may resume, at the State's sole discretion, upon the Contractor's resolution of all report deficiencies and all deficiencies related to legal proceedings.

7. Out-of-State Travel

Costs for (i) travel to and from audit assignment destinations located outside New York State, and in association with such travel (ii) meals and (iii) lodging, for those assignments that require such, shall be subject to the same limitations described in the New York State Office of the State Comptroller's Travel Manual. These limitations including the current available rates may be found by accessing the following New York State Office of the State Comptroller's web site at <http://www.osc.state.ny.gov/agencies/travel/travel.htm>. The contractor will be required to provide the same level of detail to support travel, meal and lodging expenses that a State employee is required to provide when seeking reimbursement for such expenses. These travel expenses shall be separately invoiced and submitted with the invoice for payment upon acceptance of the final audit report by the Department.

8. Testify at Article 78 or Other Court Proceedings

The Contractor may be required to present testimony or evidence as to the audit process and the basis for audit findings in Article 78 or other court proceedings, if necessary, which could include other administrative, civil, or criminal proceedings. The State shall pay the Contractor in accordance with the Contractor's approved cost proposal (see Attachment 6). For the purpose of paying the Contractor, a court proceeding will be deemed completed upon issuance of the court officer's decision.

The contractor shall timely provide sufficient qualified personnel to present testimony and/or evidence, if necessary, in Article 78 or other court proceedings related to work performed under this agreement. The contractor shall present testimony and/or evidence within State established timeframes.

9. Review of Deliverables

The State will attempt to review deliverables submitted by the Contractor to the State, accept or reject those deliverables, and provide written comments and notice of deficiencies, if any, to the Contractor, within fifteen (15) working days of receipt and will use all reasonable efforts to complete the review in less than the allotted time. The Contractor shall correct the deficiencies cited by the State and resubmit the deliverable for approval within ten (10) working days of receipt of the State's comments, unless an extension is requested in writing by the Contractor and approved in writing by the State. The Contractor shall respond to all State comments and incorporate such response into its resubmission of the deliverable. Full response by the Contractor to the State's comments within ten (10) working days will constitute fulfillment of that deliverable unless the State provides, within ten (10) working days of receipt of the resubmitted deliverable, notice of a continuing deficiency. If notice of a continuing deficiency is given, the State will provide to the Contractor a detailed description of the deficiencies that continue. If the Contractor fails to meet all criteria within the timeframes mentioned above, the State reserves the right to withhold

payment until the State is satisfied that all the deliverables have been achieved as set forth in this Agreement.

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

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

The intent of the above paragraph is to preclude the introduction of new and unrelated items during subsequent reviews, which could have been identified by a thorough review of a previously submitted deliverable. Such reviews and resubmissions shall not be construed as a waiver of any deliverable or obligation to be performed under this Agreement, nor of any scheduled deliverable date, nor any rights or remedies provided by law or under this Agreement, nor State comment on any deliverable, relieve the Contractor from any obligation or requirement of this Agreement.

In the event the State fails to review and accept or reject a deliverable within fifteen (15) working days of receipt, the Contractor shall notify the State of the late response and proceed with performance as if acceptance had been received from the State. However, such failure by the State to respond shall not constitute acceptance of the deliverable by the State. If, in such circumstances, the State subsequently requires material changes to the deliverable, the parties shall fairly consider and mutually agree as to the effect of the untimely rejection or acceptance on the delivery or implementation schedules. In no event shall the Contractor be entitled to any price increase due to the need to correct deficient deliverables.

The Contractor will deliver drafts of deliverables to the State to facilitate the State’s review process. Nothing set forth herein with regard to the formal review process for deliverables shall preclude verbal comments by the State to the Contractor or its representatives during that process, and those verbal comments may be provided in addition to the formal process set forth herein.

10. Term of Contract

This agreement shall be effective upon approval of the New York State Office of the State Comptroller.

The contract term shall be sixty (60) months commencing approximately August 1, 2013 through July 31, 2018. The State shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience.

This agreement may be canceled at any time by the Department of Health after giving 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.

11. 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 bidders' proposals. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

12. 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.gov/agencies/gbull/g_232.htm.

13. 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.gov/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.ny.gov. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.gov/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 9).

14. State Consultant Services Reporting

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

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

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

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

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

15. Lobbying Statute

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

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. modifies the governance of the New York State Commission on Public Integrity
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

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

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

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

16. 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.

17. 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.dhSES.ny.gov/ocs/breach-notification>.

18. 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 offeror meeting the registration requirements but who is not so registered in accordance with the law.

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

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

Forms ST-220-TD and ST-220-CA may be accessed electronically at:
ST-220-TD:

http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf and

ST-220-CA:

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

19. Piggybacking

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

20. 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:

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt. 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 [New York State Department of Health, Division of Finance and Rate Setting, Bureau of HCRA Operations and Financial Analysis, Corning Tower [OCP-810] Albany, NY 12237].
- C. a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the

Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- D. New York State Department of Health may disqualify a Bidder as being non-responsive under the following circumstances:
- a) If a Bidder fails to submit a MWBE Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

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

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

Equal Employment Opportunity Requirements

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

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

known.

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

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

G. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal, with the exception of Attachment 11 “Sample Standard NYS Contract Language and Appendices”, will be included 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-**

- 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)

H. ATTACHMENTS

1. Audit Protocols –Payor Surcharges/Assessments
2. Audit Protocols – Provider Surcharges/Assessments
3. HCRA Performance Audit – Report to the New York State Department of Health – Electing Payor Audit Report
4. HCRA Performance Audit – Report to the New York State Department of Health – Provider Audit Report
5. Transmittal Letter Template
6. Bid - Cost Proposal Form
7. No-Bid Form
8. Lobbying Form
9. Vendor Responsibility Attestation
10. N.Y.S. Taxation and Finance Contractor Certification forms ST-220-TD and ST-220-CA
11. State Consultant Services – Form A Contractors Planned Employment and State Consultant Services – Form B Contractors Annual Employment Report
12. M/WBE Utilization Plan Form
13. Sample Standard Contract Language with Appendices
 - Appendix A - Standard Clauses for All New York State Contracts
 - Appendix X - Modification Agreement Form
 - Appendix D - General Specifications
 - Appendix G - General Notices
 - Appendix H – Federal Health Insurance Portability and Accountability Act (HIPAA)

**AUDIT PROTOCOLS
PAYOR SURCHARGES/ASSESSMENTS**

SURCHARGES

1. Reviews of Procedures

a. Questionnaires

Each auditee will be required to complete a questionnaire, created by the Contractor and approved by the State, relating to their process for determining their direct surcharge obligation. It will be the contractor's responsibility to test and verify that the responses given are factual. This will be accomplished by testing of claim data that is described below. A copy of the completed questionnaire will be given to the State for their records.

b. Documentation Review

The Contractor will review all data/documentation provided by the auditee prior to the fieldwork, to ensure that the data/documentation can be tested by the Contractor for HCRA audit purposes. If the data/documentation provided by the auditee is unable to be used for audit testing, the Contractor shall provide the State with a written explanation. The Contractor will also provide the State with a written description of the alternate procedures they plan to use to validate the accuracy of the auditee's surcharge payments for the year under review and quantify any surcharge payment deficiencies.

c. Interviews

The Contractor will review policies and procedures applicable to completion of the monthly surcharge reports for the audit period under review. Specifically, it should be determined how the auditee processed claims, applied surcharges and ultimately remitted the surcharges to the HCRA pool. The Contractor will also determine how the auditee identified non-claims based payments (e.g., per member per month payments), and payments made pursuant to advance payment, capitation and/or financial risk sharing arrangements, for surcharge payment purposes. Similarly, policies and procedures applicable to claims/payments that are not surcharged should be reviewed. To accomplish this, the contractor will conduct interviews of appropriate personnel at various levels within the organization and it is expected that some of these interviews will require

that Contractor audit staff have an extensive understanding of electronic data processing systems.

2. Accounting Records Review

- a. Obtain the payor's certified financial statements for the year under review.
- b. Reconcile the certified financial statements to the payor's books and records (i.e., trial balance) for that year. If the certified financials are not available for the year under audit, obtain the previous year's certified statements and adjusting journal entries to determine if there were any significant changes to the facility's books and records. In the year under audit, follow up on the significant items (pertinent to surchargeable claims) identified in the previous year's adjusting journal entries to assure that the payor's records accurately account for these items currently.
- c. Assure that the "payor reports" for HCRA tie into the books and records mentioned in step b above.

3. Validate the Accuracy of Surcharge Payments (including Risk Sharing Arrangements) for the Year Under Review and Quantify Any Surcharge Payment Deficiencies

- a. Assure that the patient services payment data ties into the books and records mentioned in step 2b above to insure that the auditee provided the universe of payments made during the year under review. Such payments include, but are not limited to, claim and non-claim based payments and payments made pursuant to advance payment, capitation and/or financial risk sharing arrangements.
- b. Through a test of the payment data sufficient enough to draw a valid conclusion, identify services that were not surcharged, or not surcharged at the proper rate. If the entire population of claims is not used then a statistically valid sample should be used. The Department will determine if the entire population is to be reviewed or if a statistically valid sample is to be used. The sample should be reflective of the service mix
- c. Of the services identified above, determine why no surcharge was applied. On claims/payments that cannot be explained, consult the payor to determine why no surcharge was applied and summarize all discrepancies. Establish the appropriateness of any adjustments and related surcharge payments pertaining to the audit

period that the payor claims they reported/paid subsequent to the year under review.

- d. Using the information obtained from services tested and the payor's explanations, summarize the amounts for services that should have been surcharged, but that were not, for the payor's database for the calendar year in question.
- e. If identification of the actual surcharge underpayment (step d above) is not possible, identify the universe of services that were not surcharged at the full surcharge rate. If the entire universe of claims is not used, using a statistically valid random sample at a 99% confidence level, determine the number of sample errors and project these errors to the universe. Through this sample projection, identify the low, mean and highpoint surcharge underpayment in total for the year audited. If the contractor utilizes statistical sampling, the contractor will prepare a statistical sampling description to be signed by the contractor and the auditee and included as an attachment to the audit report. If the auditee declines to sign a statistical sampling description, the contractor will document the request and refusal in the work papers and audit report.

4. Alternate Procedures

If the contractor is required to utilize alternate procedures because audit data is not available, the contractor will prepare an alternate procedures description to be included as an attachment to the audit report.

5. Test of Accounting Records

The contractor will be responsible for verifying the total annual reported patient services payments and surcharges. This verification will require review and reconciliation of the various accounting books, financial statements (and/or general ledger records) and documentation supporting the monthly reports, including but not limited to prior years' financial statements and year end adjusting journal entries.

B. COVERED LIVES ASSESSMENTS

1. Review of Procedures

a. Questionnaires

Each auditee will be required to complete a questionnaire relating to their process for determining and reporting individual and family unit statistics as well as their assignment to a HCRA region. It will be the contractor's responsibility to test and verify that the responses given are factual. This will be accomplished by testing payor report data as described below.

b. Documentation Review

The Contractor will review all data/documentation provided by the auditee prior to the start of field work, to ensure that the data/documentation can be tested by the Contractor for HCRA audit purposes. If the data/documentation provided by the auditee is not usable for audit testing, the Contractor shall provide the State with a written explanation. The Contractor will also provide the State with a written description of the alternate procedures they plan to use to validate the accuracy of the auditee's assessment payments for the year under review and quantify any assessment payment deficiencies.

c. Interviews

The Contractor will review documents, policies and procedures applicable to completion of the monthly payor reports for the audit period under review. Specifically, it should be determined how the auditee determined covered lives category (individual, family unit, region), apportioned covered lives and ultimately remitted assessments to the HCRA pool.

2. Test of Enrollment Records and Remittance Systems

a. Obtain the payor's enrollment records for the year under review.

b. Assure that the payor reports for the twelve months tie into the enrollment records.

c. Verify that all covered lives are properly reported by covered lives category (e.g., individual or family unit and region) and that apportionments are correct.

d. Verify that remittance calculations are correct.

3. Validate the Accuracy of Assessment for the Year Under Review and Quantify Assessment Payment Deficiencies

- a. Assure that the enrollment data tie to another independent source to insure that the auditee provided the universe of enrollment data for the year under review.
- b. Through a test of the enrollment data sufficient enough to draw a valid conclusion, identify covered lives that were not assessed or were assessed at an incorrect rate (see 3b on page 2). Check the logic behind the payor's system for enrollment when covered lives are added or subtracted during the course of any given month to make sure that all covered lives are properly captured.
- c. Consult with the payor and determine the reasons for the cases identified in the step b.
- d. Using the information obtained from steps a through c above, summarize the covered lives that should have been assessed, including any adjustments, and calculate the assessment underpayment.
- e. If identification of the actual assessment underpayment (step d above) is not possible, identify the universe of covered lives that were not assessed or were assessed using an incorrect amount. Using a statistically valid random sample at a 99% confidence level, determine the number of sample errors and project these errors to the universe. Develop and apply an error rate for each region and covered lives category. Through this sample projection, identify the low, mean and highpoint assessment underpayment for the year audited. If the contractor utilizes statistical sampling, the contractor will prepare a statistical sampling description to be signed by the contractor and the auditee and included as an attachment to the audit report. If the auditee declines to sign a statistical sampling description, the contractor will document the request and refusal in the work papers and audit report.

4. Alternate Procedures

If the contractor is required to utilize alternate procedures because audit data is not available, the contractor will prepare an alternate procedures description to be included as an attachment to the audit report.

C. REPORT ON FINDINGS AND RECOMMENDATIONS

Based upon the results of the audit test work, the contractor will prepare a draft report of findings and recommendations to be sent to the State for review within 10 working days of the completion of test work. The State will review the draft report and return it to the Contractor within 10 working days of receipt with any changes or modifications needed before the draft can be forwarded to the auditee. The Contractor will incorporate State's comments and forward the revised draft report to the auditee for their responses to the findings and recommendations detailed in the report.

HCRA Performance Audits Payor Audit Schedule

This schedule is an estimate and subject to change with the approval of the Department.

Task	Business Days
Audit Assignment-Conflict Check	
1. Contractor receives State audit assignment.	
2. Contractor conducts conflict check and notifies DOH in writing of outcome. Conflicts will be assigned to Contractor's alternate/subcontractor. Note that the Contractor shall have fifteen days (15), from the date the State assigns an audit, to complete the audit conflict review and notify the State, in writing, or the State may revoke the audit assignment from the Contractor and assign the audit to the Contractor's alternate/subcontractor.	15 days
Commencement of Audit	
1. 1. DOH sends audit notification letter and timeframes to auditee. DOH provides copy of auditee's payment history, to Contractor/Subcontractor ("Contractor"), as appropriate.	
Payor Milestones and Timelines for Review of One Year	
1. Reviewee Notification, Review Kick-Off - Contractor sends letter, questionnaire, and data requests to Reviewee. The Reviewee will have 44 business days to compile data requests, ask questions, and prepare documentation. Contractor will schedule on-site time for the entrance conference.	Day 1
2. Pre-field work Planning – Contractor will schedule a series of status calls and/or on-site visits with the Reviewee to discuss: Questionnaire, Milestones, Data Blue Print, Status of data request, Any other relevant issues, and Reviewee questions.	Day 11, Day 22, Day 33
3. Questionnaire Submission – Reviewee's completed questionnaire is due to contractor.	Day 40
4. Entrance Conference/Data Receipt/Fieldwork Begins – On Day 45, an entrance conference will be held, and one years' worth of data is due. The last day to submit requested data and documentation to Contractor is Day 45. Fieldwork begins on Day 45, and Contractor will be on-site at this time conducting interviews and reviewing documentation.	Day 45
5. Data and Information Request Representation Letter Due – Letter indicating that all documentation and data provided to this point is complete, accurate, and in accordance with the instructions in Contractor's questionnaire.	Day 45
6. Fieldwork – Resolution of Data Issues – Contractor will resolve data follow-up questions and confirm if alternative procedures are required. Testing commences at this point.	Day 50
7. Testing Results Sent to Reviewee - Contractor will send the Preliminary Results Packet to the Reviewee for their review and response. Contractor and the Reviewee will have a meeting to briefly discuss the preliminary findings and next steps. The Reviewee will have 24 business days to formulate and document their response to Contractor's results.	Day 75
8. Preliminary Results Meeting – DOH, Contractor, and Reviewee will have a meeting to discuss preliminary findings and next steps.	Day 78
15. Responses to Test Results are due – Reviewee responses and supporting documentation are due to Contractor.	Day 99
16. Review of Preliminary Results Response with DOH – Contractor will review responses and supporting documentation with DOH during the Review of Preliminary Results Response Meeting.	Day 102
17. Data Exceptions Conference - Contractor, the Reviewee, and DOH will engage in a conference call to discuss final results of testing. The Reviewee will be notified of the outcome of the response review, and will be given next steps. It should be noted the results of testing are final.	Day 129
18. Extrapolation Process – To the extent a statistical sample is used, Contractor will send the results of testing to its statistician for extrapolation.	Day 134

**HCRA Performance Audits
Payor Audit Schedule**

19. DOH Reviews Draft Report – contractor to submit the draft report to DOH. DOH to have 10 business days for report review.	Day 159
20. Draft Report Revisions – DOH comments on report due to Contractor.	Day 169
21. DOH Approves Draft Report – Contractor to provide revised draft report to DOH for final approval prior to delivery to the Reviewee.	Day 173
22. Formal Response to Report – Contractor to send draft report to Reviewee for their formal response. The Reviewee to have 15 business days to formally respond to Contractor’s report, which will be included as part of the final report.	Day 174
23. Exit Conference – Contractor, the Reviewee, and DOH will engage in a conference call to discuss the report.	Day 179
24. Contractor Response to Report – Reviewee’s formal response due to Contractor.	Day 189
25. Final Report – Contractor to submit final report with Reviewee responses attached to DOH.	Day 199
Hearings/Administrative Proceedings	
1. Contractor provides qualified staff to testify at proceedings, as needed. Contractor will testify as to the audit process and basis for audit findings in a DOH hearing process, if necessary, and in legal proceedings, which could include other administrative, civil, or criminal proceedings.	As needed

**AUDIT PROTOCOLS
PROVIDER SURCHARGES/ASSESSMENTS**

A. SURCHARGES

1. Reviews of Procedures

a. Questionnaires:

Each auditee will be required to complete a questionnaire, created by the Contractor and approved by the State, relating to their process for determining their direct surcharge obligation. It will be the contractor's responsibility to test and verify that the responses given are factual. This will be accomplished by testing of data that is described below. A copy of the completed questionnaire will be given to the State for their records.

b. Documentation Review

The Contractor will review all data/documentation provided by the auditee prior to the start of fieldwork to ensure that all data/documentation provided can be tested by the Contractor for HCRA audit purposes. If the data/documentation provided by the auditee is unable to be used for audit testing, the Contractor shall provide the State with a written explanation. The Contractor will also provide the State with a written description of the alternate procedures they plan to use to validate the accuracy of the auditee's surcharge payments for the year under review and quantify any surcharge payment deficiencies.

c. Interviews:

The Contractor will review policies and procedures applicable to completion of the monthly surcharge reports for the audit period under review. The Contractor will review procedures for determining the proper HCRA election status for payments received from primary and secondary payors. Specifically, it should be determined how the auditee processed invoices, applied surcharges and ultimately remitted the surcharges to the HCRA pool. Similarly, policies and procedures applicable to invoices that are not surcharged should be reviewed. To accomplish this, the Contractor will conduct interviews of appropriate personnel at various levels within the organization and it is expected that some of these interviews will require that Contractor audit staff have extensive understanding of electronic data processing systems.

2. Accounting Records Review

- a. Obtain the provider's certified financial statements for the year under review.
- b. Reconcile the certified financial statement to the provider's books and records (i.e., trial balance) for that year. If the certified financials are not available for the year under audit, obtain the previous year's certified statement and adjusting journal entries to determine if there were any significant changes to the facility's books and records. In the year under audit, follow up on the significant items (pertinent to surchargeable claims) identified in the previous year's adjusting journal entries to assure that the provider's records accurately account for these items currently.
- c. Assure that the "provider's reports" for HCRA tie into the books and records mentioned in step b above.

3. Validate the Accuracy of Surcharge Payments (including Risk Sharing Arrangements) for the Year Under Review and Quantify Any Surcharge Payment Deficiencies

- a. Assure that the patient services revenue data ties into the books and records mentioned in step 2b above to insure that the auditee provided the universe of patient services revenue received during the years under review. Such receipts include, but are not limited to, claim and non-claim based payments and payments made pursuant to advance payment, capitation and/or financial risk sharing arrangements.
- b. Through a test of receipts sufficient enough to draw a valid conclusion, identify services that were not surcharged, or not surcharged at the proper rate (see Payor Audit Protocols, page 2-Section 3b).
- c. Of the services identified above, determine why no surcharge was applied. On receipts that cannot be explained, consult the provider to determine why no surcharge was applied and summarize all discrepancies. Establish the appropriateness of any adjustments and related surcharge payments pertaining to the audit period that the provider claims they reported/paid subsequent to the year under review.
- d. Using the information obtained from services tested and the provider's explanations, summarize the amounts for services that should have been surcharged, but that were not, for the provider's database for the calendar year in question.
- e. If identification of the actual surcharge underpayment/overpayment (step d above) is not possible, identify the universe of services that

were not surcharged at the full surcharge rate. Using a statistically valid random sample at a 99% confidence level, determine the number of sample errors and project these errors to the universe. Develop and apply an error rate for each service and payor category. Through this sample projection, identify the low, mean and highpoint surcharge underpayment for the year audited. If the contractor utilizes statistical sampling, the contractor will prepare a statistical sampling description to be signed by the contractor and the auditee and included as an attachment to the audit report. If the auditee declines to sign a statistical sampling description, the contractor will document the request and refusal in the work papers and audit report.

4. Alternate Procedures

If the contractor is required to utilize alternate procedures because audit data is not available, the contractor will prepare an alternate procedures description to be included as an attachment to the audit report.

5. Test of Accounting Records

The contractor will be responsible for verifying the total annual reported patient services revenues and surcharges. This verification will require review and reconciliation of the various accounting books, financial statements (and/or general ledger records) and documentation supporting the monthly reports, including but not limited to prior years' financial statements and year end adjusting journal entries.

1% ASSESSMENT ON GENERAL HOSPITALS

In accordance with Section 2807- c (18) of the Public Health Law, a 1% assessment is charged to general hospitals on their net inpatient revenues received. The assessments are required to be remitted on a monthly basis. The contractor will be responsible for verifying the assessments remitted to the pool. Steps to be performed as part of this review will include, but are not limited to, the following:

- Tracing the reported net inpatient services revenues to their respective source documents to verify the reported monthly totals.
- Analyzing the respective source records to determine the accuracy and completeness of the records.
- Testing a representative sample of receipts/transactions in detail to verify that the transaction was properly reported.
- Determine if the provider maintains revenue listings that show net inpatient services revenues which the provider has not assessed.
- For revenues that were not assessed, examine a number of receipts in detail to verify the provider's exempt determination.

Additionally, the contractor will perform any other tests deemed necessary to attest to the accuracy, completeness and timeliness of the assessments remitted to the pool by

the provider, and to quantify assessment underpayments/overpayments for the year under review.

1. Validate the Accuracy of Assessment Payments Made for the Year Under Review and Quantify Any Surcharge Payment Deficiencies

- a. Through a test of accounting records and inpatient services billings sufficient enough to draw a valid conclusion, identify inpatient services that were not assessed. Adjustments, which may cross calendar years, need to be taken into consideration when testing services for this step.
- b. Consult with the provider to determine the reasons for the cases identified in step a above.
- c. Using the information obtained from steps a and b above, summarize the net inpatient services revenues amounts that should have been assessed, calculate the assessment underpayment/overpayment.
- d. If identification of the actual assessment underpayment/overpayment (step c above) is not possible, identify the universe of net inpatient services revenues that were not assessed. Using a statistically valid random sample at the 99% confidence level, determine the number of sample errors and project these errors to the universe. Through this sample projection, identify the low, mean and highpoint assessment underpayment for the year audited.
- e. If the contractor utilizes statistical sampling, the contractor will prepare a statistical sampling description to be signed by the contractor and the auditee and included as an attachment to the audit report. If the auditee declines to sign a statistical sampling description, the contractor will document the request and refusal in the work papers and audit report.

2. Alternate Procedures

If the contractor is required to utilize alternate procedures because audit data is not available, the contractor will prepare an alternate procedures description to be included as an attachment to the audit report.

3. Test of Accounting Records

The contractor will be responsible for verifying the total annual reported 1% assessments. This verification will require review and reconciliation of the various accounting books, financial statements (and/or general ledger records) and documentation supporting the monthly reports, including but

not limited to prior years' financial statements and year end adjusting journal entries.

REPORT ON FINDINGS AND RECOMMENDATIONS

Based upon the results of the audit test work, the contractor will prepare a draft report of findings and recommendations to the State for review within 10 business days of the completion of test work. The State will review the draft and return it to the Contractor within 10 business days of receipt with any changes required before the draft can be forwarded to the auditee. The Contractor will incorporate the State's comments and forward the revised draft report to the auditee for their responses to the findings and recommendations detailed in the report.

HCRA Performance Audits Provider Audit Schedule

This schedule is an estimate and subject to change with the approval of the Department.

Task	Business Days
Audit Assignment-Conflict Check	
9. Contractor receives State audit assignment.	
10. Contractor conducts conflict check and notifies DOH in writing of outcome. Conflicts will be assigned to Contractor's alternate/subcontractor. Note that the Contractor shall have fifteen days (15), from the date the State assigns an audit, to complete the audit conflict review and notify the State, in writing, or the State may revoke the audit assignment from the Contractor and assign the audit to the Contractor's alternate/subcontractor.	15 days
Commencement of Audit	
DOH sends audit notification letter and timeframes to auditee. DOH provides copy of auditee's payment history to Contractor/Subcontractor ("Contractor"), as appropriate.	
Provider Milestones and Timelines for Review of One Year	
1. Reviewee Notification, Review Kick-off – Contractor sends letter, questionnaire, and data requests to Reviewee. The Reviewee will have 44 business days to compile data requests, ask questions, and prepare documentation, Contractor will schedule on-site time for the entrance conference.	Day 1
2. Pre-fieldwork Planning – Contractor will schedule the kick-off and data pull conference calls. The kick-off conference call is held to describe the process of the review and the data pull conference call details what data fields Contractor is requesting.	Day 11, Day 22, Day 33
3. Questionnaire submission – Reviewee's completed questionnaire due to Contractor.	Day 40
4. Entrance Conference/Data Receipt/Fieldwork Begins – On day 45, an entrance conference will be held, and the first years' worth of data is due. Fieldwork begins on Day 45, and Contractor will be on-site at this time conducting interviews and reviewing documentation.	Day 45-50
5. Data and Information Request Representation Letter Due – Letter indicating that all documentation and data provided to this point is complete, accurate, and in accordance with the instructions in Contractor's questionnaire.	Day 45
6. Fieldwork-Resolution of Data Issues – Contractor will resolve data follow-up questions and confirm if alternative procedures are required. Testing commences at this point.	Day 50
7. Payor Determinations Provided to Reviewee – Contractor will conduct a name to name match with the claims data to the DOH electing Payor list. Contractor will identify the direct and non-direct payors. Contractor determinations will be provided to the Reviewee for review.	Day 65
8. Responses to Payor Determinations are due – Reviewee responses and supporting documentation are due to Contractor. Contractor to review responses and discuss with DOH.	Day 85
9. Testing Results Sent to Reviewee – Contractor will send test results to the Reviewee for their review and response. Contractor, DOH, and the Reviewee will hold a conference call to discuss the preliminary findings and next steps.	Day 100
10. Preliminary Results Meeting – A conference call between the Reviewee, DOH, and Contractor is held to discuss preliminary test results.	Day 105
11. Responses to Test Results are due – Reviewee responses and supporting documentation are due to Contractor. Contractor to review responses and discuss with DOH.	Day 125
12. Review of Preliminary Results Response with DOH – Contractor reviews the supporting documentation provided by the Reviewee and discusses with DOH.	Day 135
13. Data Exceptions Conference – Contractor, the Reviewee, and DOH will engage in a conference call to discuss outstanding issues. The Reviewee will be notified	Day 145

**HCRA Performance Audits
Provider Audit Schedule**

of the outcome of the response review, and will be given next steps. It should be noted that, once this process has been completed, the results of the testing are final.	
14. DOH Reviews Draft Report – Contractor to submit the draft report to DOH. DOH to have 10 business days for report review.	Day 165
15. Draft Report Revisions – DOH report comments due to Contractor.	Day 175
16. DOH Approves Draft Report – Contractor updates the draft report based on DOH's comments and DOH approves the draft report to be sent out to the Reviewee.	Day 179
17. Formal Response to Report – Contractor to send final report to Reviewee for their formal response. The Reviewee to have 15 business days to formally respond to Contractor's report, which will be included as part of the final report.	Day 180
18. Exit conference – A conference call is held between the Reviewee, DOH, and Contractor to discuss the final report.	Day 185
19. Contractor Response to Report – Reviewee's formal response due to Contractor. Contractor to respond as necessary.	Day 195
20. Final Report – Contractor to submit final report with Reviewee responses attached, to DOH.	Day 205
Hearings/Administrative Proceedings	
2. Contractor provides qualified staff to testify at proceedings, as needed. Contractor will testify as to the audit process and basis for audit findings in a DOH hearing process, if necessary, and in legal proceedings, which could include other administrative, civil, or criminal proceedings.	As needed

HCRA PERFORMANCE AUDIT

Report to the New York State Department of Health

Auditee
Address
City, State, Zip
FEIN

Period Covered

Issue Date

Partner Signature:

Date:

Partner Name:

Title:

Partner

Firm Name:

Firm Address:

TABLE OF CONTENTS

Executive Summary

- Overview of Health Care Reform Act (HCRA)
- Payor Background
- Purpose and Scope
- Review Approach
- Results of Procedures Performed
- Procedures Performed
- Decision Trees

Attachment A - Surcharge Variance Table by Year and Month

Attachment B - Covered Lives Variance by Year and Month

Attachment C – Alternate Procedures and/or Statistical Sampling Description(s)

Attachment D - Decision Tree Diagrams (different for each audit)

Attachment E - Payors Response to the Findings

Attachment F - Contractor's Response to Payor Response

Executive Summary

Overview of the Health Care Reform Act (HCRA)

The Health Care Reform Act (HCRA) was established in law effective January 1, 1997. Under HCRA, most non-Medicare payors are required to make surcharge payments for subsidization of indigent care and healthcare initiatives. In addition, certain payors are required to contribute to a Professional Education Pool, largely to fund graduate medical education expenses. Collectively, these funds are known as the Public Goods Pool (pool).

The surcharges apply to affected payments for patient services rendered on or after January 1, 1997 by New York State (NYS) licensed general hospitals, comprehensive primary care clinics, ambulatory surgery centers and freestanding clinical laboratories. Subsequent legislation eliminated the surcharge on all services provided by freestanding clinical laboratories and referred laboratory services provided by hospitals and/or comprehensive clinics on or after October 1, 2000. For an affected third-party payor that elects to pay the surcharges directly to NYS, the standard surcharge rates on paid Non-Medicaid and Medicaid claims varies over certain periods. The rates are posted on the NYS Department of Health (DOH) Web site at: <http://www.health.ny.gov/nysdoh/hcra/surcharge.htm>.

Covered lives assessments (CLA) are based on the HCRA region in which the member resides and the member's enrollment status (family or individual). Surcharges and covered lives remittances are required monthly, accompanied by the Certification Form, Report of Patient Services Payments and Surcharge Obligations, and Report of CLA (Payor Reports).

The HCRA statute also provided that an allocation of pooled funds be used to review affected payor and provider compliance with the surcharge and assessment requirements set forth in Sections 2807-c, 2807-j, 2807-s, and 2807-t of the NYS Public Health Law (PHL).

Payor Background

This section should include the following information:

- Name, location and type of auditee.
- Specific background on auditee's operation.
- Background information on the type and amount of claims processed by the auditee and the types of risk sharing and advance payment arrangements the auditee has with providers, independent practice associations and other entities and the amounts remitted to the HCRA pools.
- Any other pertinent background information.

Purpose and Scope

This report is a summary of our audit of (insert auditee name)'s HCRA surcharges and covered lives assessments for the (insert year audited).

Our audit objectives were to:

- Determine whether (insert auditee name) had reliable information technology systems, processes, and controls in place to accurately calculate and report HCRA surcharges and covered lives assessments, and
- Determine whether (insert auditee name) accurately calculated, reported, and paid the HCRA surcharges and covered lives assessments, and quantify surcharge payment deficiencies, for the year under review.

Review Approach

In reporting the scope of the audit, the contractor should describe the depth and coverage of work conducted to accomplish the audit's objectives. Explain the relationship between the universe and what was audited; identify the organization and period covered; report the kinds and sources of evidence; and explain any quality or other problems with the evidence. The contractor should also report significant constraints imposed on the audit approach by data limitations or scope impairments.

To report the methodology used, the contractor should clearly explain the evidence gathering and analysis techniques used. This explanation should identify any significant assumptions made in conducting the audit; describe any comparative techniques applied; describe the criteria used; and when sampling significantly supports the contractor's findings, describe the sample design and state why it was chosen.

The specific steps include the following (the contractor may propose additional or alternative activities as long as they are consistent with the Department's stated goals and objectives):

HCRA Surcharge and Covered Lives Assessment Processes

- Reviewed the questionnaire responses submitted by (insert auditee name) related to their processes for determining their surcharge and covered lives assessment obligations.
- Conducted interviews with (insert auditee name) staff to gain an understanding of the HCRA surcharge and covered lives assessment procedures and controls in place.

- Documented our understanding of the significant processes, procedures, and controls used by (insert auditee name) to calculate, report and remit the HCRA surcharges and covered lives assessments during the year under review in the following areas:
 - Finance
 - Accounting
 - Enrollment
 - Network Operations
 - Information Technology
- Reviewed internal HCRA reports, studies, and audits (if applicable), and followed up on open items.
- Reviewed third party reports (i.e., external auditors and the New York State Department of Insurance) and where applicable followed up on relevant issues and findings.
- Documented the controls over the systems used to calculate the HCRA surcharge and covered lives assessment for data entry and system access.
- Reviewed documentation related to the process used by (insert auditee name) to calculate the HCRA surcharge. This included a review of documentation related to claim based and non-claim based (e.g., per member per month payments) payments, and payments made pursuant to advance payment, capitation and/or financial risk sharing arrangements, during the year under review.
- Reviewed documentation related to the process used by (insert auditee name) to calculate the HCRA covered lives assessment.

Test of Accounting Records

- Obtained (insert auditee's name)'s certified financial statements and reviewed accounts relating to the HCRA surcharge expense, HCRA covered lives assessment expense, and total patient services payments.
- Obtained and reviewed the reconciliation of (insert auditee's name)'s certified financial statements to the general ledger and the patient services payment system (e.g., claim and non-claim based payments and payments made pursuant to advance, capitation and/or financial risk sharing arrangements) and obtained explanations of all significant reconciling items relating to patient services payments in total and the HCRA surcharge and covered lives assessment.

- Obtained and reviewed the monthly Payor Reports submitted to the DOH Pool Administrator in (insert the year being audited), and reconciled the reports to (insert auditee name)'s various accounting books and records.

Surcharges

- Reviewed the process for determining which payments (e.g., claims, non-claim based, advance, capitation, and financial risk sharing payments) are included in and excluded from the surcharge calculation. Obtained and reviewed the source code used to calculate the HCRA surcharge and compared the program logic to the HCRA regulations for completeness and accuracy.
- Judgmentally selected (insert #) claims paid in (insert the audit year), and compared these claims with the system data to identify potential data input errors.
- Determined, based on certain data fields, whether payments were properly included in or excluded from the HCRA surcharge calculation.
- Describe the methods and procedures utilized to validate the accuracy of the auditee's surcharge payments, and to quantify the surcharge underpayment, for the year under review. Include a description of the procedures utilized to query patient services payment data, calculate the total HCRA non-exempt payment amounts and related HCRA surcharge obligation, reconcile those amounts to (insert auditee's name)'s Payor Reports and identify the actual surcharge underpayment for the year under review. If the contractor utilizes statistical sampling, the contractor will prepare a statistical sampling description to be included as an attachment to the audit report. If the contractor is required to utilize alternate procedures because audit data is not available, the contractor will prepare an alternate procedures description to be included as an attachment to the audit report.

Covered Lives Assessments

- Reviewed the process for determining who is included in and excluded from the covered lives population. Throughout this process, (insert contractor name) also tied the applicable dollar amounts and members to supporting documentation, and noted applicable controls and quality assurance procedures.
- Selected a sample of (insert #) members for (insert the audit year) to test the accuracy of the enrollment records against the system data for individual/family status, region, and eligibility.
- Determined, based on certain enrollment fields, whether members were properly included in or excluded from the HCRA assessment calculation.
- Describe the methods and procedures utilized to validate the accuracy of the auditee's assessment payments, and to quantify the assessment underpayment, for the year under review. Include a description of the procedures utilized to query historic enrollment information, calculate the total regional individual and family unit covered lives counts and related HCRA assessment obligation, reconcile those covered lives counts and the assessment amounts to (insert auditee's name)'s Payor Reports and identify the actual assessment underpayment for the year under review. If the contractor utilizes statistical sampling, the contractor will prepare a statistical sampling description to be included as an attachment to the audit report. If the contractor is required to utilize alternate procedures because audit data is not available, the contractor will prepare an alternate procedures description to be included as an attachment to the audit report.

Exit Conference

- Held an exit conference on (insert date) with (insert auditee's name) management to discuss our findings.
- Received a written response to (enter contractor's name)'s findings on (insert date).

Results of Procedures Performed

This section should include a management summary of the detailed audit findings and conclusions.

- 1.
- 2.
- 3.
- 4.
- 5.

Procedures Performed

As were presented at a high level in the review approach, the procedures performed section of the report should reflect a detailed step by step documentation of the specific steps taken during the review and noting of findings and issues identified at each phase of the review for the particular payor being reviewed.

Decision Trees

This should provide a detailed graphic representation of the steps performed for surcharge test work, identifying initial claim counts and showing the results to those claim counts as each audit step progresses.

Attachment A

Surcharge Variance Tables by the Year and Month

<YEAR> Surcharge Results			
Month	Contractor	Reviewee	Overpayment/Underpayment
January	\$	\$	\$
February	\$	\$	\$
March	\$	\$	\$
April	\$	\$	\$
May	\$	\$	\$
June	\$	\$	\$
July	\$	\$	\$
August	\$	\$	\$
September	\$	\$	\$
October	\$	\$	\$
November	\$	\$	\$
December	\$	\$	\$
Total	\$	\$	\$

Note: The numbers above have been rounded to the nearest whole number for reporting purposes.

Attachment B

Covered Lives Variance Tables by Month and Year

<YEAR> Covered Lives Assessment Results for <Reviewee>			
Month	Reviewee	CLA Test work Results	\$ Difference
January	\$	\$	\$
February	\$	\$	\$
March	\$	\$	\$
April	\$	\$	\$
May	\$	\$	\$
June	\$	\$	\$
July	\$	\$	\$
August	\$	\$	\$
September	\$	\$	\$
October	\$	\$	\$
November	\$	\$	\$
December	\$	\$	\$
Total	\$	\$	\$

Attachment C
Alternate Procedures and/or Statistical Sampling Description(s)
for (insert auditee name)

If the contractor is required to utilize alternate procedures because audit data is not available, the contractor shall prepare an alternate procedures description to be included as an attachment to the audit report. The alternative procedures description shall include, at a minimum, the following:

- A description of specific data/documentation deficiency.
- The reason(s) why alternate procedures are necessary.
- A description of the alternate procedures utilized to determine validate the accuracy of the auditee's surcharge and/or assessment payments and to quantify surcharge and/or assessment underpayments (if applicable) for the year under review. This includes use criteria, methods, plans and procedures related to these procedures.
- A description of any limitations on potential findings as a result of using alternate procedures.

If the contractor uses statistical sampling methods, the contractor shall prepare a statistical sampling description to be included as an attachment to the audit report. The statistical sampling description shall include, at a minimum, the following:

- A description of the sample design utilized. This includes universe and errors found.
- The reason why the specific sample design was chosen.

Attachment D
Decision Tree Diagrams

Attachment E
(Insert Auditee Name)'s Response to Findings

Attachment F
(Insert Contractor Name)'s Response to Auditee Comments

HCRA PERFORMANCE AUDIT

Report to the New York State Department of Health

Auditee
Address
City, State, Zip
FEIN

Period Covered

Issue Date

Partner Signature:

Date:

Partner Name:

Title: Partner

Firm Name:

Firm Address:

TABLE OF CONTENTS

Executive Summary

- Overview of Health Care Reform Act (HCRA)
- Provider Background
- Purpose and Scope
- Review Approach
- Results of Procedures Performed
- Procedures Performed

Attachment A –	Alternate Procedures and/or Statistical Sampling Description(s)
Attachment B –	Calendar Year –Year by Month Findings Schedules
Attachment C -	Sample Cash Receipts Tables
Attachment D-	Provider Response
Attachment E -	Contractor Response to Providers Response

Executive Summary

Overview of the Health Care Reform Act (HCRA)

The Health Care Reform Act (HCRA) was established by law effective January 1, 1997. HCRA designated providers of services, including general hospitals issued an operating certificate pursuant to Article 28 of the Public Health Law (PHL), diagnostic and treatment centers providing ambulatory surgical services, are required to pay surcharges on certain net patient service revenues received for or on account of visits made or services performed on or after January 1, 1997, in accordance with Sections 2807-j and 2807-s of the PHL. Additionally, hospitals are also required to pay a 1% Statewide Assessment on certain inpatient revenues received.

Providers are mandated to pay their HCRA obligations by filing monthly Public Goods Pool Reports.

The HCRA statute provides that an allocation of pooled funds be used to review affected provider compliance with the surcharge and assessment requirements set forth in Sections 2807-c, 2807-j, and 2807-s of the NYS Public Health Law (PHL).

Provider Background:

This section should include the following information:

Name, location and type of auditee.

Specific background on auditee's operation.

Any other pertinent background information.

Purpose and Scope

This report is a summary of our audit of (insert auditee name)'s HCRA surcharges and 1% statewide assessments for the (insert year audited).

Our audit objectives were to:

- Determine whether (insert auditee name) had reliable information technology systems, processes, and controls in place to accurately calculate and report HCRA surcharges and 1% statewide assessments, and
- Determine whether (insert auditee name) accurately calculated, reported, and paid the HCRA surcharges and 1% statewide assessments, and quantify surcharge and assessment deficiencies, for the year under review.

Review Approach

In reporting the scope of the audit, the contractor should describe the depth and coverage of work conducted to accomplish the audit's objectives. Explain the relationship between the universe and what was audited; identify the organization and period covered; report the kinds and sources of evidence; and explain any quality or other problems with the evidence. The contractor should also report significant constraints imposed on the audit approach by data limitations or scope impairments.

To report the methodology used, the contractor should clearly explain the evidence gathering and analysis techniques used. This explanation should identify any significant assumptions made in conducting the audit; describe any comparative techniques applied; describe the criteria used; and when sampling significantly supports the contractor's findings, describe the sample design and state why it was chosen.

The specific steps include the following (the contractor may propose additional or alternative activities as long as they are consistent with the Department's stated goals and objectives):

HCRA Surcharge and 1% Statewide Assessment Processes

- Reviewed the questionnaire responses submitted by (insert auditee name) related to their processes for determining their HCRA surcharge and 1% assessment obligations.

- Conducted interviews with (insert auditee name) staff to gain an understanding of the HCRA surcharge and 1% assessment procedures and controls in place.
- Documented our understanding of the significant processes, procedures, and controls used by (insert auditee name) to calculate, report and remit the HCRA surcharges and 1% assessments during the year under review in the following areas:
 - Finance
 - Accounting
 - Billing
 - Patient Accounting
 - Information Technology
- Reviewed internal HCRA reports, studies, and audits (if applicable), and followed up on open items.
- Reviewed third party reports (i.e., external auditors and the New York State Department of Insurance) and where applicable followed up on relevant issues and findings.
- Reviewed documentation related to the process used by (insert auditee name) to calculate the HCRA surcharge and 1% assessment. This included a review of documentation related to claim based and non-claim based (e.g., per member per month payments) payments, payments made pursuant to advance payment, capitation and/or financial risk sharing arrangements, and payments from the New York State Medical Assistance Program for Medicaid beneficiaries during the year under review.
- Documented our understanding of the criteria used to determine the proper reporting line on the Provider Reports for payments received during the year under review. Determined, based on certain payment fields, whether these amounts had been properly reported.
- Reviewed the process for determining the proper HCRA election status for payments received from primary and secondary payors. Determined, based on certain payor fields, whether payors had been properly flagged as direct pay or non-direct pay payors.
- Documented the controls over the systems used to calculate the HCRA surcharge and 1% assessment for data entry and system access.

Test of Accounting Records

- Obtained (insert auditee's name)'s certified financial statements and reviewed accounts relating to the HCRA surcharge expense, 1% statewide assessment expense, and total patient services revenues.
- Obtained and reviewed the reconciliation of (insert auditee's name)'s certified financial statements to the general ledger and the patient accounting system and obtained explanations of all significant reconciling items relating to patient services revenues in total and the HCRA surcharge and 1% statewide assessment.
- Obtained and reviewed the monthly Provider Reports submitted to the DOH Pool Administrator in (insert the year being audited), and reconciled the reports to (insert auditee name)'s various accounting books and records.

Payment Processing

- Reviewed the process for determining which payments are included in and excluded from the surcharge calculation. Obtained and reviewed the source code used to calculate the HCRA surcharge and compared the program logic to the HCRA regulations for completeness and accuracy.
- Documented our understanding of the significant processes, procedures and controls used by (insert auditee name) in the accounts receivable, cash receipts and patient accounting processes relevant to the HCRA surcharge and the 1% assessment calculations.
- Judgmentally selected (insert #) claims paid in (insert the audit year), and compared these claims with the system data to identify potential data input errors.
- Determined, based on certain payment fields, whether payments were properly included in or excluded from the HCRA surcharge and 1% statewide assessment calculations.
- Describe the methods and procedures utilized to validate the accuracy of the auditee's surcharge payments, and to quantify the surcharge underpayment, for the year under review. Include a description of the procedures utilized to query patient services payment data, calculate the total HCRA non-exempt payment amounts and related HCRA surcharge obligation, reconcile those amounts to (insert auditee's name)'s Payor Reports and identify the actual surcharge underpayment for the year under review. If the contractor utilizes statistical sampling, the contractor will prepare a statistical sampling description to be included as an

attachment to the audit report. If the contractor is required to utilize alternate procedures because audit data is not available, the contractor will prepare an alternate procedures description to be included as an attachment to the audit report.

Exit Conference

- Held an exit conference on (insert date) with (insert auditee's name) management to discuss our findings.
- Received a written response to (enter contractor's name)'s findings on (insert date).

Results of Procedures Performed

This section should include a management summary of the detailed audit findings and conclusions.

- 1.
- 2.
- 3.
- 4.
- 5.

Procedures Performed

As were presented at a high level in the review approach, the procedures performed section of the report should reflect a detailed step by step documentation of the specific steps taken during the review and noting of findings and issues identified at each phase of the review for the particular provider being reviewed.

Attachment A

Alternate Procedures and/or Statistical Sampling Description(s) for (insert auditee name)

If the contractor is required to utilize alternate procedures because audit data is not available, the contractor shall prepare an alternate procedures description to be included as an attachment to the audit report. The alternative procedures description shall include, at a minimum, the following:

- A description of specific data/documentation deficiency.
- The reason(s) why alternate procedures are necessary.
- A description of the alternate procedures utilized to determine validate the accuracy of the auditee's surcharge and/or assessment payments and to quantify surcharge and/or assessment underpayments (if applicable) for the year under review. This includes use criteria, methods, plans and procedures related to these procedures.
- A description of any limitations on potential findings as a result of using alternate procedures.

If the contractor uses statistical sampling methods, the contractor shall prepare a statistical sampling description to be included as an attachment to the audit report. The statistical sampling description shall include, at a minimum, the following:

- A description of the sample design utilized. This includes universe and errors found.
- The reason why the specific sample design was chosen.

Attachment B
Calendar Year – Year by Month Findings Schedule
Inpatient/Outpatient Surcharges

<YEAR> Inpatient Surcharges			
Month	Reviewee	Contractor	Underpayment/Overpayment
January	\$	\$	\$
February	\$	\$	\$
March	\$	\$	\$
April	\$	\$	\$
May	\$	\$	\$
June	\$	\$	\$
July	\$	\$	\$
August	\$	\$	\$
September	\$	\$	\$
October	\$	\$	\$
November	\$	\$	\$
December	\$	\$	\$
Total	\$	\$	\$

<YEAR> Outpatient Surcharges			
Month	Reviewee	Contractor	Underpayment/Overpayment
January	\$	\$	\$
February	\$	\$	\$
March	\$	\$	\$
April	\$	\$	\$
May	\$	\$	\$
June	\$	\$	\$
July	\$	\$	\$
August	\$	\$	\$
September	\$	\$	\$
October	\$	\$	\$
November	\$	\$	\$
December	\$	\$	\$
Total	\$	\$	\$

Attachment B
Calendar Year – Year by Month Findings Schedule
1% Statewide Assessment

<YEAR> 1% Statewide Assessment			
Month	Reviewee	Contractor	Underpayment/Overpayment
January	\$	\$	\$
February	\$	\$	\$
March	\$	\$	\$
April	\$	\$	\$
May	\$	\$	\$
June	\$	\$	\$
July	\$	\$	\$
August	\$	\$	\$
September	\$	\$	\$
October	\$	\$	\$
November	\$	\$	\$
December	\$	\$	\$
Total	\$	\$	\$

Attachment C
Sample Cash Receipts Tables
Inpatient

Reviewee Cash Receipts - <YEAR> through <YEAR>) (Inpatient)		Cash Receipts by Year			
Hospital Report Lines	Description	<YEAR>	<YEAR>	<YEAR>	Total
1	Total net patient services revenue received, including surcharges				
2a	Revenue related to Medicare Eligible Beneficiaries - Non-Assessable				
2b	Revenue related to FEHBA-Job Corps, CHAMPUS, and VA Service - Non-Assessable				
2c	Revenue received for contracted services, performed for other designated providers - Non-Assessable				
2d	Revenue received from a public hospital, pursuant to an affiliation agreement contract - Non-Assessable				
2e	Revenue received for residential health care and hospice services - Non-Assessable				
2f	Revenue related to physician practice or faculty practice plan revenue, based on discrete billings for private practicing physician services- Non-Assessable				
2g	Revenue received directly from the public goods pool- Non-Assessable				
2h	Revenue related to governmental deficit financing grants - Non-Assessable				
2i	Other Non-Assessable revenue				
3	Total Non-Assessable revenue (Total of 2a-2i)				
4	Total Assessable Revenue (Line 1 minus Line 3)				
5a	Revenue received from Direct Pay Payors relating to Medicaid, including HMO/PHSP - Assessable				
5b	Revenue received from all other Direct Pay Payors- Assessable				
5c	Revenue received from all other Direct Pay Payors- Assessable				
6	Total Net Assessable Revenue Received from Direct Pay Payors				
7	Total Assessable Revenue Received from Non-Direct Pay Payors including surcharges (Line 4 minus Line 6)				
8	Revenue received from Non-Direct Pay Payors relating to Medicaid-HMO/PHSP/Non Specified Payors- Assessable				
9	Revenue received from other Non-Direct Pay Payors- Assessable				
10	Revenue received from Non-Direct Pay Payors relating to Self Pay Uninsured & Patient Secondary Payor Co-Pay/Deduct/Co-ins Amounts (Primary is DIRECT)- Assessable				
11	Revenue received from Non-Direct Pay Payors relating to Non-Specified Payors - Assessable				
12a	All other revenue received from Non-Direct Pay Payors having a GME liability - Assessable				
12b	All other revenue received from Non-Direct Pay Payors not having a GME liability - Assessable				
13	Total Assessable Revenue, including surcharges (Line 8 through 12b)				

Attachment C
Sample Cash Receipts Tables
Outpatient

Reviewee Cash Receipts - <YEAR> through <YEAR>) (Outpatient)		Cash Receipts by Year			
Hospital Report Lines	Description	<YEAR>	<YEAR>	<YEAR>	Total
1	Total net patient services revenue received, including surcharges				
2a	Revenue related to Medicare Eligible Beneficiaries - Non-Assessable				
2b	Revenue related to FEHBA-Job Corps, CHAMPUS, and VA Service - Non-Assessable				
2c	Revenue received for contracted services, performed for other designated providers - Non-Assessable				
2d	Revenue received from a public hospital, pursuant to an affiliation agreement contract - Non-Assessable				
2e	Revenue received for residential health care and hospice services - Non-Assessable				
2f	Physician practice or faculty practice plan revenue, based on discrete billings for private practicing physician services - Non-Assessable				
2g	Payments from laboratory specimens drawn or collected outside New York State - Non-Assessable				
2h	Payments received directly from the public goods pool (included in line 1 above) - Non-Assessable				
2i	Governmental deficit financing grants - Non-Assessable				
2j	Other Non-Assessable				
2k	Payments received from referred ambulatory clinical laboratory hospital services - Non-Assessable				
3	Total Non-Assessable revenue (Total of 2a-2k)				
4	Total Assessable Revenue (Line 1 minus Line 3)				
5	Net Assessable Revenue Received from Direct Pay Payors - Assessable				
5a	Medicaid, including HMO/PHSP - Assessable				
5b	Other Payors- Assessable				
5c	All other Direct Pay Payors - Assessable				
6	Total Net Assessable Revenue Received from Direct Pay Payors				
7	Total Assessable Revenue Received from Non-Direct Pay Payors including surcharges (Line 4 minus Line 6)				
8	Medicaid-HMO/PHSP/Non Specified Payors- Assessable				
9	Other Payors - Assessable				

Attachment C
Sample Cash Receipts Tables
1% Statewide Assessment

Reviewee 1% Statewide Assessment - <YEAR> through <YEAR>		Payments by Year			
Hospital Report Lines	Description	<YEAR>	<YEAR>	<YEAR>	Total
1	Total Net Patient Services Revenue Received, including surcharges				
2	Less Revenue Non-Assessable for the Statewide Assessment				
2a	Revenue received from a public hospital, pursuant to an affiliation agreement contract				
2b	Revenue received for residential health care and hospice services				
2c	Revenue related to physician practice or faculty practice plan revenue, based on discrete billings for private practicing physician services				
2d	Revenue received directly from the public goods pool				
2e	Revenue related to Governmental deficit financing grants				
2f	Non-GME pool distributions from Public Goods Pools and NYPHRM pool distributions				
3	Total Non-Assessable revenue (Total of 2a-2f)				
4	Total Assessable Revenue (Line 1 minus Line 3)				
5	Less Gross Surcharges Payable				
6	Net Assessable Revenue Received (Line 4 minus Line 5)				
	Lump sum Cash Settlement Payments Received				
7	Statewide Assessment (Sum of Line 6 and Lump sum Cash multiplied by 1.00%)				
8	Plus/Minus Overpayments and Underpayments				
9	Amount due the Statewide Assessment				

Attachment D
(Insert Auditee Name)'s Response to Findings

Attachment E
(Insert Contractor Name)'s Response to Auditee Comments

[TO BE COMPLETED ON BIDDER'S LETTERHEAD]

[INSERT CURRENT DATE]

Ms. Phyllis Stanton
New York State Department of Health
Division of Finance and Rate Setting
Bureau of HCRA Operations and Financial Analysis
Corning Tower [OCP-810]
Albany, NY 12237

Re: HCRA Performance Audit- RFP #1301311116

Dear Ms. Phyllis Stanton:

[Insert Bidder's complete name and address, including the name, mailing address, email address, fax number and telephone number for both the authorized signatory and the person to be contacted regarding the proposal] submits this firm and binding offer to the Department in response to the above-referenced RFP and agrees as follows:

1. Bidder provides the following statement which describes the legal structure of the entity submitting the proposal: **[Insert Bidder's Response]**;
2. Bidder accepts the contract terms and conditions contained in this RFP, including any exhibits and attachments;
3. Bidder acknowledges receipt of all Department amendments to this RFP, as may be amended;
4. Bidder provides a statement confirming that the bidder is an Independent Certified Public Accounting (CPA) Firm licensed in New York State with a minimum of five years healthcare reporting experience, preferably with healthcare insurers and healthcare providers (i.e. hospitals, D&TC's, and Ambulatory Surgery Centers);
5. Bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;
6. Bidder agrees that the proposal and all provisions of the proposal will remain valid for minimum of 365 calendar days from the closing date for submission of proposals;
7. Bidder certifies:
 - a) that there are business relationships and/or ownership interests for the above named organization that may represent a conflict of interest for the organization as bidder, as described in the RFP Section C.3. Attached to this letter is a

description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided; **OR**

- b) that no conflict of interest relationship exists for the above named organization as bidder
8. Bidder is/is not [indicate one] proposing to utilize the services of any subcontractor(s). If a proposal is submitted which proposes to utilize the services of a subcontractor(s), the bidder provides, in an Appendix to this Transmittal Letter, a subcontractor summary for each listed subcontractor and certifies that the information provided is complete and accurate.

The summary document for each listed subcontractor should contain the following information:

- a. Complete name of the subcontractor;
 - b. Complete address of the subcontractor;
 - c. A general description of the scope of work to be performed by the subcontractor;
 - d. Percentage of work the subcontractor will be providing;
 - e. A statement confirming that the subcontractor is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department; and
 - f. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law) sex, marital status, political affiliation, national origin, or handicap.
10. A statement confirming that the bidder has or will locate an office and key project staff in a single location within twelve (12) miles of the Capitol building in Albany, New York.

The undersigned individual affirms and represents that he/she has the legal authority and capacity to sign and submit this bid on behalf of **[Insert Bidder's Name]** as well as to execute a contract with the Department.

Signature of Authorized Official

Printed Name of Authorized Official

NEW YORK STATE
DEPARTMENT OF HEALTH

COST PROPOSAL FORM

PROCUREMENT TITLE: HCRA PERFORMANCE AUDITS FAU #1301311116

Bidder Name:
Bidder Address:

Bidder NYS Vendor ID No:

COST PROPOSAL – Years 1-5*

Type of Audit	Years 1, 2, and 3 of Contract		Years 4 and 5 of Contract**	
	Bidder's Price Per Audit	Bidder's Hourly Rate Price for Testimony	Bidder's Price Per Audit	Bidder's Hourly Rate Price for Testimony
Payor				
Provider				

NOTE: Audit prices are a fixed flat rate per audit and will include an audit period of two (2) to six (6) years. The price paid per audit will be the same whether the audit covers two (2) or six (6) years of data. The audit years will be assigned at the discretion of the Department.

* Cost Proposals that do not include pricing for all eight pricing categories above will be disqualified.

** The prices submitted for years 4 and 5 must not exceed the price for years 1, 2, and 3 by more than 10%. Cost proposals submitted with prices for years 4 and 5 exceeding the years 1, 2 and 3 prices by more than 10% will be disqualified.

I, _____, for and on behalf of the below named organization, signify that the below named organization agrees to abide by the terms of the approved proposal and is fully able and willing to carry out deliverables contained herein. The prices presented in this proposal shall remain in effect for 365 days from the last day to submit a proposal.

Signature: _____

Title: _____

Date: _____

**NEW YORK STATE
DEPARTMENT OF HEALTH**

NO-BID FORM

PROCUREMENT TITLE: Performance Audits to Assess Compliance with HCRA Regulations
RFP #1301311116

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

We do not provide the requested services. Please remove our firm from your mailing list

We are unable to bid at this time because:

Please retain our firm on your mailing list.

(Firm Name)

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(E-mail Address)

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

NEW YORK STATE
DEPARTMENT OF HEALTH

Lobbying Form

PROCUREMENT TITLE: Performance Audits to Assess Compliance with HCRA Regulations

FAU #1301311116

Bidder Name: _____

Bidder Address: _____

Bidder NYS Vendor ID No: _____

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

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

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

No Yes

If yes, please answer questions 1a. and 1b. If no, proceed to question 2a:

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

No Yes

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

No Yes

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

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

No Yes

2b. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

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

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section F, Administrative Issues, 13 - Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

- An on-line Vendor Responsibility Questionnaire has been updated or created at NYS 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
MWBE 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, if applicable

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

- M/WBE Form #1 -
New York State Department of Health

BIDDER/CONTRACTOR M/WBE UTILIZATION PLAN

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

Description of Plan to Meet M/WBE Goals

PROJECTED M/WBE USAGE

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

**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:

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

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

M/WBE UTILIZATION WAIVER REQUEST

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

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

Include attachments below to evidence good faith efforts:

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

Section 4: Signature and Contact Information

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

Submitted by : _____ Title: _____

Signature

- M/WBE Form #3 -
New York State Department of Health
QUARTERLY UPDATE
M/WBE CONTRACTOR COMPLIANCE & PAYMENT REPORT

Contractor Name:	
Contract Title:	Contract No.

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

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

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

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

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

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

Submitted by : _____ Title: _____

 Signature

- M/WBE Form #4 -
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							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

 (Name and Title)

 (Signature)

 Date

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

M/WBE AND EEO POLICY STATEMENT TEMPLATE

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 _____
Name & Title _____
Signature & Date _____

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

- M/WBE Form #6 -
 New York State Department of Health
 WORKFORCE EMPLOYMENT UTILIZATION REPORT

Check applicable categories: Project Staff Consultants
 Subcontractors

Contractor Name _____ Contract # _____

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

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

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):

Department of Health
One Commerce Plaza
Albany, NY 12210

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE: 3450000

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:

NYS VENDOR ID 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.

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

Contract No.:

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

CONTRACTOR

STATE AGENCY

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

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

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

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

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

TABLE OF CONTENTS

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

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwb certification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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.

GLBU: DOH01

APPENDIX X

Contract Number:	Contractor:
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Amendment Number X -	Department ID:
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This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the New York State 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 workplan 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)

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

\$ _____ From ____ / ____ / ____ To ____ / ____ / ____

This will result in new contract terms of:

\$ _____ From ____ / ____ / ____ To ____ / ____ / ____
 (All years thus far combined) (Initial start date) (Amendment end date)

Signature Page for:

Contract Number:	Contractor:
Amendment Number X -	Department ID:

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

CONTRACTOR SIGNATURE:

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

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

On the _____ day of _____, _____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Contract.

(Notary)

STATE AGENCY SIGNATURE:

By: _____ Date: _____
(signature)

Printed Name

Title: _____

STATE AGENCY CLARIFICATION:

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

ATTORNEY GENERAL’S SIGNATURE

STATE COMPTROLLER’S SIGNATURE

By: _____
Date: _____

By: _____
Date: _____

STATE OF NEW YORK
AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment:
- 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 and Section E.6. of the Request for Proposals as included in Contract Appendix B).

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.gov/epay/index.htm, by email at epunit@osc.ny.gov 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.gov/epay>.

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

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

III. Term of Contract

- A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor.

Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.

- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

IV. Proof of Coverage

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

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

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

- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:

1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
2. DB-120.1 – Certificate of Disability Benefits Insurance OR
3. DB-155 – Certificate of Disability Benefits Self-Insurance

V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

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

APPENDIX D
GENERAL SPECIFICATIONS

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

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

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

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

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

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

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

2. Date/Time Warranty Statement

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

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

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

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

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

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

T. Provisions Upon Default

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

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

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

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

W. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
 - a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
 - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000

for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.

- i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
- ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
- iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

X. Certification Regarding Debarment and Suspension Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1. APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person

who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

Y. Confidentiality Clauses

- 1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
- 2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.

3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

Z. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the 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.

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

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

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

December, 2011

Appendix H

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

- I. Definitions. For purposes of this Appendix H of this AGREEMENT:
 - A. “Business Associate” shall mean CONTRACTOR.
 - B. “Covered Program” shall mean the STATE.
 - C. Other terms used, but not otherwise defined, in this AGREEMENT shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
 - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
 - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
 - C. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
 5. Contact procedures for Covered Program to ask questions or learn additional information.
 - D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
 - E. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.

- F. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
 - G. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
 - H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
 - I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- III. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
 - B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
 - C. Business Associate may disclose Protected Health Information as Required By Law.
- IV. Term and Termination
- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.
 - B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.
 - C. Effect of Termination.
 - 1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall

apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this AGREEMENT to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

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

VI. Miscellaneous

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

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 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New

York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.