

**NEW YORK STATE DEPARTMENT OF HEALTH  
AND  
HEALTH RESEARCH, INC.**

**An Invitation for Bid (IFB)**

**Bureau of Chronic Disease Control**

**Cancer Services Program (CSP)**

**IFB No. 15413**

**Integrated Breast, Cervical and Colorectal Cancer Screening Program Payment Agent  
For the Five (5) Boroughs of New York City and Five (5) Hudson Valley Counties**

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**Schedule of Key Events**

<b>IFB Release Date:</b>	<b>September 30, 2015</b>
<b>Written Questions Due:</b>	<b>October 14, 2015</b>
<b>Letter of Intent to Bid Due: (non-mandatory)</b>	<b>October 14, 2015</b>
<b>Response to Written Questions: (on or about)</b>	<b>October 26, 2015</b>
<b>Bid Due Date by 3:00 P.M. Eastern Time:</b>	<b>November 9, 2015</b>
<b>Anticipated Contract Start Date:</b>	<b>January 1, 2016</b>

## 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:

Elizabeth Wood  
Bureau of Contracts  
New York State Department of Health  
Room 2827, Corning Tower, Empire State Plaza  
Albany, New York 12237  
Phone: 518-474-7896  
Email: [elizabeth.wood@health.ny.gov](mailto:elizabeth.wood@health.ny.gov)

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

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

Submission of Bids; Submission of Written Questions; Debriefings and Negotiation of Contract Terms after Award contact:

Wendy Gould  
New York State Department of Health  
Bureau of Chronic Disease Control  
150 Broadway  
Riverview Center, Room 350  
Albany, NY 12204  
Email: [canserv@health.ny.gov](mailto:canserv@health.ny.gov)

*For further information regarding these statutory provisions, see the Lobbying Statute summary in Section E, 12 of this solicitation.*

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## A. Introduction

The New York State Department of Health (Department) and Health Research, Inc. (HRI) are seeking bids for the provision of payment agent services to facilitate , payment for clinical services rendered by health care providers and clinical laboratories participating in six (6) of the Department’s 36 Integrated Breast, Cervical and Colorectal Cancer Screening Program contractors.<sup>1</sup>

The chosen vendor will be awarded two (2) contracts, one (1) State contract and one (1) HRI contract. The State contract will support payment agent costs to conduct workflow development, verification, implementation, administrative services, and closeout costs as well as the direct costs for reimbursement of health care providers and clinical laboratories for their provision of eligible clinical services rendered to eligible Cancer Services Program clients in six (6) of the Department’s 36 Cancer Services Program contractors. The second contract will be issued by HRI solely to support the direct costs for reimbursement of health care providers and clinical laboratories for their provision of eligible clinical services rendered to eligible Cancer Services Program clients in six (6) of the Department’s 36 Cancer Services Program contractors. The HRI contract is supported with federal funds awarded through a Cooperative Agreement with the Centers for Disease Control and Prevention (CDC). The contract period for each of the two (2) contracts is anticipated to be 36 months beginning on the date posted in the Schedule of Key Events on the cover of this Invitation for Bid (IFB).

## B. Background

Public Health Law, section 2405, established the cancer detection and education program, also known as the Cancer Services Program (CSP), to promote screening and detection of cancer among unserved and underserved New Yorkers and to educate the public about the benefits of early detection. As defined in Public Health Law, unserved and underserved populations refer to those New Yorkers who do not have adequate financial resources to obtain cancer screening services, whose health insurance either does not cover or does not adequately cover such services, or, who cannot meet their deductible obligations to access such services. Public Health Law section 2406 charges the State Commissioner of Health to make grants to organizations to provide evidence-based cancer screening and detection programs to address these New Yorkers in need. The CSP oversees those grant programs, referred to as the “CSP screening contractors” throughout the rest of this IFB.

CSP screening contractors promote comprehensive, guideline-concordant breast, cervical and colorectal cancer screening services among age-appropriate populations in their service regions. They also coordinate the provision of integrated cancer screening services to eligible individuals, with an emphasis on priority populations. The eligible population, priority populations and integrated cancer screening services are defined as:

*Eligible Population* – Eligibility is based on client income, health insurance status, age and other personal criteria such as risk status. Individuals meeting all the criteria are eligible to receive services. These criteria are:

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<sup>1</sup> HRI is a not-for-profit corporation affiliated with the Department whose mission is to independently assist the Department to effectively evaluate, solicit and administer external financial support for Department projects.

- Individuals who are uninsured or underinsured. These are individuals who lack health insurance, whose health insurance does not cover cancer screening services, or who cannot meet their deductible obligations (including monthly spend down or co-payments) for purposes of accessing coverage under their health insurance and who attest, prior to services being performed, that they are unable to proceed with cancer screening because of these financial obligations.
- Individuals whose household income is at or below 250% of the Federal Poverty Guideline (FPG) or who live above 250% of the FPG but attest, on a client consent form, they are unable to afford the cancer screening services offered by the program.
- Women aged 40 and older are able to receive breast and cervical cancer screening. Men and women aged 50 and older are able to receive colorectal cancer screening. Other criteria, such as family history, also contribute to screening eligibility. For example, women under age 40 determined to be at high risk or with clinically significant findings for breast cancer may be eligible for breast cancer screening through the program. Similarly, men and women younger than 50 years old at increased risk for colorectal cancer may be eligible for screening. Men at higher risk for breast cancer based on a personal or family history of breast cancer, who are currently experiencing breast symptoms and who also meet all other eligibility criteria, may be eligible for the program.

*Priority Populations* – The term priority populations refers to sub-groups of the eligible population who are disproportionately affected by breast, cervical and colorectal cancer. These priority populations include:

- Individuals aged 50 to 64;
- Women aged 40 and over who are rarely or never screened for cervical cancer (those women who have never had a Pap test or have not had a Pap test within the last five years); and
- Individuals who are medically unserved or underserved including, but not limited to, individuals who experience barriers to services due to race, ethnicity, age, disability, sexual orientation, gender identity, socio-economic status; cultural isolation and/or geographic location.

*Integrated Cancer Screening Services* – The provision of all appropriate cancer screening services for which an individual is eligible. For example, women aged 50 years and older who meet the program eligibility criteria will be provided comprehensive, guideline-concordant breast, cervical and colorectal cancer screenings.

The CSP screening contractors develop relationships with providers (e.g., hospitals, clinics, health care providers, clinical laboratories) and community-based organizations to conduct outreach to priority populations and to provide screening, diagnostic and case management services, public education, data management and quality assurance. The contractor and its partners also assist eligible individuals diagnosed with breast, cervical, colorectal or prostate cancer to obtain prompt, comprehensive treatment through the New York State Medicaid Cancer Treatment Program (MCTP).

CSP screening contractors interact with and enter into written agreements with health care providers and clinical laboratories to offer eligible clients cancer screening and diagnostic services and reimburse those health care providers and clinical laboratories for provision of those services to eligible clients. The Department provides guidance to CSP screening contractors and providers for eligibility and reimbursement for appropriate cancer screening and diagnostic services in the *CSP Operations Manual*. The CSP screening contractors provide the *CSP Operations Manual* (posted along with this IFB) and the established reimbursement fee schedule referred to as the Maximum Allowable Reimbursement Schedule (MARS) (Attachment 1) to participating health care providers and clinical laboratories annually and as revisions are made. CSP screening contractors also work with the Department to implement internal control systems and strategies to ensure that health care providers and clinical laboratories participating in the screening program are appropriately credentialed, that clients meet eligibility requirements, and that reimbursement is made

only for eligible services. These activities are the responsibility of the Department and the CSP screening contractors and will not be the responsibility of the payment agent.

The CSP is supported with State funds appropriated in the New York State Budget and from a Cooperative Agreement from the CDC, the latter is administered by HRI. As such, the CSP screening contractors receive both State and HRI contracts; the State contract supports their personnel and other costs to administer the program as well as reimbursement of clinical and laboratory services; the HRI contract supports reimbursement of clinical and laboratory services. These services were procured through a Request for Applications and have no connection to this IFB.

The intent of this procurement is to obtain a payment agent to reimburse health care providers and clinical laboratories that participate in six (6) of the 36 CSP screening contractors for the provision of eligible services to eligible clients. The payment agent will receive two (2) contracts; one (1) State contract and one (1) HRI contract, as previously described. Determination of which contract will support which of the rendered clinical and laboratory services will be made by the Department/HRI, and not by the payment agent and is based on funder (e.g., CDC) requirements. Clinical and laboratory services will be reimbursed on a fixed-price, fee-for-service basis, per the Maximum Allowable Reimbursement Schedule (MARS - Attachment 1). The MARS may be adjusted periodically by the State to reflect changes to reimbursable services and/or fees based on federal and state mandates, national clinical practice guidelines and available funding.

The payment agent will be provided with access to monthly billing reports (MBR) for each of the six (6) CSP screening contractors, available within 14 calendar days of the close of each month. It is anticipated that the payment agent will import the reports to prepare and submit two (2) separate, monthly vouchers; one (1) for State and one (1) for HRI for the aggregate value of the MBR. The MBRs document allowable reimbursement to health care providers and clinical laboratories of eligible screening and diagnostic clinical and laboratory services rendered to eligible CSP clients. A sample MBR with relevant variables is provided as Attachment 2.

The payment agent will engage in payment and accounting, reporting, and procurement of a fidelity bond, as described further in the detailed specifications, below.

## **C. Detailed Specifications**

### **1. HEALTH CARE PROVIDERS AND CLINICAL LABORATORIES PAYMENT AND ACCOUNTING**

The payment agent will provide reimbursement to health care providers and clinical laboratories (providers) that have agreements with the six (6) CSP screening contractors and/or the Department and HRI serving the five (5) boroughs of New York City and a five- (5-) county region of the Hudson Valley that includes Ulster, Dutchess, Westchester, Rockland and Putnam Counties, for the provision of eligible services to eligible CSP clients, and to maintain appropriate accounting of these transactions. Note that the payment agent is not responsible for determining CSP service and client eligibility; the Department/HRI and the CSP screening contractors implement internal controls to ensure that the MBRs reflect only eligible CSP services provided to CSP-eligible clients.

The Department/HRI will provide the payment agent with provider contact information and a sample MBR upon contract execution. Within 15 calendar days from the start of the state contract, the payment

agent will draft and provide to the designated Department/HRI staff the clinical services reimbursement workflow that documents how they will implement the requirements specified under a) Workflow Development, Verification and Implementation for Reimbursement and Accounting System detailed later in this section. Separate payments for reimbursement of clinical services from the Department and from HRI are made to the payment agent after receipt and approval of vouchers by the Department's and HRI's designated payment offices. The payment agent will gather information from the providers in order to develop payment procedures; these steps should be included in the workflow document.

The Department/HRI staff will review and respond to the workflow documents provided by the payment agent within 16 calendar days of receipt, such that workflow verification and approval will be completed and full implementation of payment and reporting ready to begin no later than 31 calendar days after the contract start date. The payment agent will communicate regularly with Department/HRI staff and have Department/HRI approval prior to receiving the MBR to be used for making the first month's payments, submitting vouchers and making payments, beginning in month two (2) of the contract.

a) Workflow Development, Verification and Implementation for Reimbursement and Accounting System:

**This activity is referred to as workflow development, verification, and implementation. Pricing must be included as a separate one-time cost on the Cost Proposal (Attachment 4).** The payment agent responsibilities for Workflow Development, Verification and Implementation for Reimbursement and Accounting System are as follows:

- i. The payment agent will establish and provide to the designated Department/HRI staff the clinical services reimbursement workflow that documents how they will implement the following: 1) establish systems to ensure protection of all information classified as "confidential" per New York State Policies and Standards found at <http://its.ny.gov/tables/technologypolicyindex.htm>, 2) establish separate bank accounts with the ability to receive and disburse funds both electronically and disbursement by check (as determined by the provider preference), 3) submit two (2), separate monthly clinical services vouchers; one (1) to the Department and one (1) HRI, 4) acquire provider attestation regarding the validity of services provided prior to issuing reimbursement, 5) make payment to providers from discrete bank accounts (one (1) for State funds, one (1) for HRI funds), 6) accounting of payments made, 7) assist with payment reconciliation, and 8) create reports as outlined in the IFB.
- ii. The payment agent will establish two (2) separate, dedicated bank accounts for the purpose of receiving the funds that will support the Department and HRI clinical and laboratory payments. Funds received from the Department for the reimbursement of clinical services shall be deposited into one (1) account and funds received from HRI for the same purpose will be deposited into the other account. Should either of those accounts earn interest, it will be deducted from the Monthly Service Fee charged by the payment agent. The payment agent will provide the Department/HRI with copies of the monthly bank statements for both accounts.
- iii. The payment agent will contact providers, gather payment information and establish payment systems. The Department/HRI will provide the payment agent with provider contact information upon contract award.

- iv. The payment agent will work with the Department/HRI designee to establish and verify that systems are in compliance with all NYS policies and standards found at <http://its.ny.gov/tables/technologypolicyindex.htm> to ensure all information classified as “confidential” is protected. The payment agent will be expected to demonstrate compliance with all applicable New York State technology policies and standards available at: <http://its.ny.gov/tables/technologypolicyindex.htm>. This includes breach/incident reporting.
- v. The workflow document should be drafted and submitted to the Department within 15 calendar days from the start of contract. The Department will verify and approve of the workflow process within 16 calendar days. The payment agent will establish bank accounts and payment systems upon approval by the Department and in time for receipt of the first MBR, anticipated to be within 45 days of the contract start date.

b) Monthly Payment Agent Service:

**This activity is reimbursed under the Monthly Administrative Service Fee on the Cost Proposal (Attachment 4).**

Once the workflow implementation is verified and approved by the Department/HRI, the first month’s MBR data will be made available to the payment agent to begin issuing payments to the providers, this is anticipated to occur 45 days from the start date of the contract. The payment agent will be given access to the MBRs within 14 calendar days of the close of the prior month for the term of the contract. The Department and HRI use different reimbursement systems, therefore, the timing of reimbursement from the Department and HRI varies, and the payment agent will receive separate payments from the Department and HRI. The payment agent shall also generate individual, monthly fiscal reports of payments made to providers, for each of the six (6) CSP screening contractors. CSP screening contractors will use these reports to monitor their clinical services funding allocations and to reconcile payments as needed (see 2. Reporting, c., i.). The number of health care providers and clinical laboratories participating with the six (6) CSP screening contractors is estimated to be 200. These numbers may fluctuate and are dependent on the number of health care providers and clinical laboratories that enter into agreements with the six (6) CSP screening contractors and/or the Department/HRI. Information about the CSP screening contractors can be obtained from the Department website at [http://www.health.ny.gov/diseases/cancer/services/community\\_resources/](http://www.health.ny.gov/diseases/cancer/services/community_resources/).

- Receipt of Monthly Billing Report: The MBR will provide service-level detail for each reimbursable service submitted during the report month. In any given MBR, a reversal of charges may occur that results in a negative fee for a particular service offered by a participating provider. In the event that the net value for a provider for a particular month is a negative value, this amount is carried into the next month’s charges, reflected in the MBR accessed by the payment agent. The payment agent is not responsible for seeking reimbursement from the State and HRI for negative balances carried from one month to the next. Any negative amounts that have not been reconciled by the end of the program year will be directly recouped from the provider by the payment agent to assure that the negative balance does not transfer into the next program year (as defined by the Department/HRI). Any negative balances appearing on a MBR for providers who no longer participate in the program will be recouped from the provider directly by the payment agent. The MBR may include, but not be limited to, a single record for each service with fields for the CSP screening contractor name, client name, client age, client date of birth, client ID number, service site (each provider

is identified by a service site code), date of service, procedure name, fund source (Department or HRI) and reimbursement rate. A sample MBR is provided as Attachment 2. Information classified as “confidential” (as defined in HIPAA and Department policies related to data classification, and/or other NYS Laws and Regulations) are to be protected. The payment agent’s software used to electronically receive and transfer information/reports will be required to protect patient information/data that is protected by the HIPAA (Appendix H) or is otherwise protected information classified as confidential. All electronic and paper files received, retained and sent by the payment agent and subcontractors (if applicable) will have established systems to protect patient data in accordance with the HIPAA.

- Upon being provided with access to the first MBR, anticipated to begin in month two (2) of the contract, the payment agent will implement internal controls to assure providers attest to the validity of services provided and, upon provision of attestations, make payments to an anticipated 125 health care providers and clinical laboratories each month, consisting of two (2) payments per health care provider or clinical laboratory (one (1) from Department funds and one (1) from HRI funds), and representing an estimated 250 individual checks or electronic payments per month, which may fluctuate to 350 payments in any given month.
- It is expected that approximately 10% of the payments will be hard copy checks and 90% will be sent electronically. The percentages provided are historic estimates only and may differ from actual percentages and may be modified throughout the contract period as new providers enroll in the program.

The payment agent responsibilities for Monthly Payment Agent services are as follows:

- i. Submission of Clinical Services Vouchers to the Department and HRI: The Department will provide the payment agent with access to the MBRs for use as back-up documentation that the payment agent will return to the Department/HRI along with monthly clinical services vouchers. The payment agent will submit vouchers and associated back-up documentation from the MBRs separately for each funding source. The vendor will submit three (3) vouchers for payment, as follows: 1) for HRI clinical reimbursement, 2) for State clinical reimbursement and 3) for the monthly administrative payment agent fee. For example, if a single MBR includes both Department-funded and HRI-funded services from the current program year only, the payment agent will prepare one (1) Department voucher for the sum of the Department-funded services on the MBR and one (1) HRI voucher for the sum of the HRI-funded services on the MBR. If the MBR includes services from the current and previous program years, the payment agent will prepare separate vouchers for each program year for the Department and a single voucher for HRI. The payment agent will prepare and submit clinical services vouchers in accordance with Section E. Administrative, 6. Payment of this IFB, to the Department and HRI within seven (7) calendar days of access to the MBRs.
- ii. Payment to Providers: Within seven (7) calendar days of receipt of payment from either the Department or HRI, and upon receipt of attestation from providers regarding the validity of services provided, the payment agent will issue payments to health care providers and clinical laboratories in an amount equal to the sum of the services associated with the health care providers or clinical laboratories (site codes) on the MBRs. The payments will not be separated within an organization for professional and technical components. Payments from the Department and HRI may not arrive at the same time and will thus require separate provider payments for Department reimbursements and HRI reimbursements. Funds received from the Department are the only funds that may be used to reimburse providers for services on the

Department vouchers AND funds received from HRI are the only funds that may be used to reimburse providers for services on HRI vouchers.

Payments to each health care provider and clinical laboratory (as identified by site codes on the MBR) will include detailed documentation of the eligible services rendered by the credentialed health care providers or clinical laboratories that correspond with the payment amount reflected in the MBRs. The detailed documentation will include all available service level information represented by the payment: the CSP screening contractor name, client name, client age, client date of birth, client ID number, service site, date of service, procedure name, fund source, and rate (see Attachment 2 for information provided in a sample MBR). The Department/HRI will provide the payment agent with access to contact information for all credentialed providers whom may be eligible for reimbursement, as represented by site codes on the MBR.

- iii. Accounting of Payments Made: The payment agent will maintain a monthly accounting summary of payments made to health care providers and clinical laboratories, including the check numbers, dates of issue, dates cashed, and total payments by funding source. The payment agent will maintain both cumulative totals for the program year and monthly totals. When applicable, the payment agent will also account for negative balances resulting from deleted services in the cumulative and monthly totals, carrying negative balances forward as needed, per MBRs accessed by the payment agent. The payment agent will follow-up with providers and clinical laboratories on a monthly basis, or as needed to reconcile all outstanding checks that have not been cashed from previous months. The Department/HRI will work with the payment agent to recoup negative balances as needed.
  - iv. Assistance with Reconciliation: The payment agent will assist CSP screening contractors, when needed, with responses to inquiries from providers and clinical laboratories to reconcile payment for services rendered.
- c) System Closeout: The payment agent will conduct system closeout activities during months 35 and 36 of the contract. Please refer to Detailed Specifications, C.2 Reporting, iii., below.

## 2. REPORTING

- a) At the request of the Department and HRI, the payment agent will participate in routine quality control assessments (e.g., verification processes or voucher trace) to verify that provider payments are made upon receipt of reimbursement from the Department and HRI and are appropriate to the vouchers submitted.
- b) The payment agent will regularly review and communicate payment information and present it to the Department and HRI, as requested. The payment agent will participate in a yearly, in-person, up to five (5)-hour meeting conducted in Albany, New York, as needed, and bi-weekly up to two (2)-hour conference calls as needed, for the entirety of the contract period.
- c) The payment agent will provide communications in the form of the following reports, using templates to be provided by the Department upon contract approval:
  - i. REPORT 1: Monthly fiscal report to the six (6) CSP screening contractors within seven (7) calendar days after provider payments are made, beginning in the first payment month and monthly thereafter, summarizing payments made to each health care provider and/or clinical laboratory participating in the six (6) CSP screening contractors. The report will include the list

of payments made to each health care provider or clinical laboratory, the dates of payment, amounts of payment, and the cumulative and monthly totals paid for both HRI and Department funds for the CSP screening contractors, including any negative balances if needed and as reflected on the MBRs.

- ii. REPORT 2: Monthly fiscal report to the Department beginning one (1) month after the first payment month and monthly thereafter, with separate summaries for Department and HRI payments made to each health care provider or clinical laboratory including the check numbers, dates issued, dates cashed, and total payments by funding source. The report should include both cumulative totals for the program year (as defined by the Department/HRI) and monthly totals. When applicable, the report will account for negative balances resulting from deleted services in the cumulative and monthly totals, carrying negative balances forward as needed and as reflected on the MBRs.

The report will also include a list of outstanding payments that have not been cashed from previous months and status of communications that have occurred to reconcile the outstanding payments. The report should include a copy of the monthly bank statements for both accounts. Following each program year end, the Department/HRI staff will contact the payment agent to determine which payments need to be recouped from providers and clinical laboratories and the mechanism for recouping those funds. For HRI payments, the monthly report will include a reconciliation of the HRI account. The report should summarize the number and nature of contacts with CSP screening contractors, barriers and proposed solutions to successful, timely payment, and suggestions for improvements and/or revisions to payment processes.

- iii. REPORT 3: A final closeout report that includes the reconciliation of the final MBR is due by the end date of the State contract to the Department, providing the following:
  - A summary of all outstanding reimbursements including payee name, payee address, dates of service, check number and check amount.
  - Communications that have occurred to follow-up with providers and clinical laboratories to reconcile and closeout all outstanding checks that have not been cashed.
  - Bank statement with a zero balance, if there are no outstanding checks. If outstanding checks exist at the time of closeout, the payment agent will reimburse the Department and HRI of any outstanding amount and the bank account balance should reflect that value.
  - A full accounting of reimbursements that occurred for the full period that payment agent services were provided and dollar value of reimbursements for the contract period.

### 3. FIDELITY BOND

Within 15 calendar days of state contract approval by the Office of the State Comptroller (OSC) and prior to the start of work, the *Contractor* shall procure at its own sole cost and expense, and shall maintain in full force and effect at all times during this Contract, until such time as all reimbursements to providers and clinical laboratories have been paid and reconciled, a third party Fidelity Bond in the amount of \$3,000,000.00. The People of the State of New York and Health Research, Inc. shall be named as the third party beneficiary of the Fidelity Bond. The Fidelity Bond shall be maintained by the Contractor in a form satisfactory to the New York State Department of Health and Health Research, Inc.

With its bid submission, the bidder should include a letter from its surety company stating that, in the event of contract award, the Fidelity Bond in the amount of \$3,000,000.00 will be provided to the New York State Department of Health and Health Research, Inc. within 15 calendar days of state contract

approval by the Office of the State Comptroller (OSC) and prior to the start of work. An award will not be made without this letter from the surety company.

#### 4. SUBCONTRACTING

Bidders may use subcontractors. If subcontractors are known at the time of application, the names should be provided and the work they will perform should be identified in the proposal. Any use of subcontractors must be approved by Department/HRI prior to start of work.

### D. Proposal

#### 1. MINIMUM BIDDER QUALIFICATIONS AND PROJECT SPECIFICATIONS

Using the Technical Response Form (Attachment 3), Bidders should submit documentation to verify that they meet the following minimum requirements:

- a) Bidder must have at least three (3) years of experience providing timely and accurate payment processing services including a volume of 350 or more payments a month in which they were responsible for maintenance of accurate and complete payment and accounting records to monitor and reconcile payments/funds and the submission of detailed monthly, quarterly and year-end fiscal reports.
- b) Bidder must indicate in Attachment 3, Technical Response Form that the payment agent offices and staff are to be located in the continental United States throughout the term of the contract.
- c) Bidder must include a statement in Attachment 3, Technical Response Form that the Vendor will comply with the security requirements available at:  
<http://its.ny.gov/tables/technologypolicyindex.htm>. This includes breach/incident reporting.

***Please note that organizations holding contracts with the Department and HRI for the Integrated Breast, Cervical, and Colorectal Cancer Screening Program and health care providers and clinical laboratories that have agreements with such contractors or the Department to provide services through the Cancer Services Program (all entities that receive payment for services from the Department's Cancer Screening Program) are not eligible to bid.***

As part of the Technical Response Form (Attachment 3), bidder should provide a narrative that describes how they will provide items 1 and 2 in Section C. Detailed Specification.

Bidders should complete Attachment 6, Reference Submission Form, and provide three (3) references. The Department-Division of Chronic Disease Prevention may contact references to verify the **Section D Proposal 1. Minimum Bidder Qualifications Part a**. Please ensure the contact information provided for each reference is accurate and up-to-date.

The supporting documentation for the Technical Response Form should not exceed 20 double spaced pages, additional pages will not be reviewed. Documentation should be prepared using 12-point, Times New Roman font or larger and have one-inch margins. Pages should be consecutively numbered and correspond directly to the questions as they appear on the Technical Response Form (Attachment 3).

## 2. METHOD OF AWARD

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

The Department and HRI will award contracts to 1 (one) responsible and responsive vendor who offers the lowest total bid. In the event of a tie, the determining factor(s) for award, in descending order of importance, will be:

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

Once a payment agent is selected, two (2) contracts will be issued. The State contract will support both payment agent costs and support the payment to health care providers and laboratories to reimburse them for provision of eligible clinical services rendered. The second contract will be issued by HRI to support payment to health care providers and laboratories to reimburse them for provision of clinical and laboratory services eligible for reimbursement with federal monies and awarded through a Cooperative Agreement with the CDC which are identified by the fund source code on the MBR (Attachment 2). Clinical and laboratory services will be reimbursed on a fixed-price, fee-for-service basis, per the MARS (Attachment 1). The MARS may be adjusted periodically by the State to reflect changes to reimbursable services and/or fees based on federal and state mandates, national clinical practice guidelines and available funding.

In order to be considered responsible and responsive, the bid must include all IFB-mandatory required documents and meet the minimum qualifications as stated in the IFB (Section D, 1.). Bids that do not meet the minimum qualifications will not be considered for award.

## 3. COST PROPOSALS

All costs associated with providing payment agent services as outlined in Section C. Detailed Specifications must be included in the bid. Costs include, but are not limited to, those associated with personnel, travel, materials, services, and miscellaneous expenses.

The bidder must provide a price in each shaded cell of the Cost Proposal (Attachment 4). Incomplete cost proposals may not be considered for an award.

The responsible corporate officer for contract award notification and execution should be listed and should sign the Cost Proposal.

## **E. Administrative**

### 1. ISSUING AGENCY

This IFB is a solicitation issued by the Department and HRI. The Department and HRI are responsible for the requirements specified herein and for the evaluation of all bids.

## 2. INQUIRIES

Any questions concerning this solicitation should be directed via email no later than the date specified in the Schedule of Key Events to:

Wendy Gould  
New York State Department of Health  
Bureau of Chronic Disease Control  
150 Broadway  
Riverview Center, Room 350  
Albany, NY 12204  
Email: [canserv@health.ny.gov](mailto:canserv@health.ny.gov)

Questions and answers, as well as any IFB updates and/or modifications will be posted on the Department of Health's website at <http://www.health.ny.gov/funding/> and on HRI's website at <http://www.healthresearch.org/funding-opportunities> on or around the date indicated in the Schedule of Key Events located on the cover of this IFB.

## 3. LETTER OF INTENT TO BID (NON-MANDATORY)

Bidders may provide an optional Letter of Intent to Bid (Attachment 13). This letter should designate an Official Representative and be emailed to the Permissible Subject Matter Contact listed on page 2 of the IFB by the date indicated in the Schedule of Key Events located on the cover of this IFB.

## 4. SUBMISSION OF PROPOSALS

The proposal must be received no later than the time and date specified in the Schedule of Key Events located on the cover sheet of IFB.

Interested vendors should submit three (3) handwritten signed originals and three (3) copies of their proposal no later than the time and date specified in the Schedule of Key Events located on the cover sheet of this IFB. E-mail and facsimile bid submissions are not acceptable and will not be considered.

Responses to this solicitation should be clearly marked "Integrated Breast, Cervical and Colorectal Cancer Screening Program Payment Agent, IFB #15413", "Bid Enclosed" and "Bid Opening Date" and be directed to:

**New York State Department of Health  
Bureau of Chronic Disease Control  
150 Broadway  
Riverview Center, Room 350  
Albany, NY 12204  
ATTENTION: Wendy Gould/Bid Enclosed**

It is the bidders' responsibility to see that bids are delivered to the above address prior to the date and time of the bid due date stated in the Schedule of Key Events. Arrangements should be made at least 24 hours in

advance of the due date and time to ensure persons are available to receive hand delivered bids. Contact Angela Ockenholt by email ([canserv@health.ny.gov](mailto:canserv@health.ny.gov)) or phone, ((518) 474-1222) to make arrangements. Additionally:

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

**Contents of the Bid Proposal:**

**Failure to submit the following items will result in disqualification:**

- Original Technical Response Form (Attachment 3)
- Original Cost Proposal (Attachment 4)

**Contents of the Bid Proposal should also include:**

- Three (3) handwritten, signed originals and three (3) copies of the Vendor Cover Sheet (Attachment 5)
- Three (3) originals and three (3) copies of the Reference Submission Form (Attachment 6)
- Three (3) signed originals and three (3) copies of the Vendor Responsibility Attestation (Attachment 7)
- Three (3) signed originals and three (3) copies of the NYS Department of Health Lobbying Form (Attachment 8)
- Three (3) signed originals and three (3) copies of the M/WBE Utilization Plan (Attachment 10)
- Encouraging Use of New York Businesses in Contract Performance (Attachment 11)
- Letter from Surety Company addressing Fidelity Bond

5. THE DEPARTMENT OF HEALTH AND HRI RESERVES THE RIGHT TO

- a) Reject any or all bids received in response to the IFB;
- b) Withdraw the IFB at any time, at the agency's sole discretion;
- c) Make an award under the IFB in whole or in part;
- d) Disqualify any bidder whose conduct and/or bid fails to conform to the requirements of the IFB;
- e) Seek clarifications and revisions of proposals;
- f) Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- g) Prior to the *bid opening*, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;

- h) Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- i) Change any of the scheduled dates;
- j) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- k) Waive any requirements that are not material;
- l) Negotiate with the successful bidder within the scope of the IFB in the best interests of the state and HRI;
- m) Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- n) Utilize any and all ideas submitted in the proposals received;
- o) Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 calendar days from the bid opening; and,
- p) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

## 6. PAYMENT

- a) Workflow Development, Verification, and Implementation: Within the first 15 calendar days of the contract, the payment agent shall provide a clinical services reimbursement workflow document describing how they will implement the following: 1) establish systems to ensure protection of all information classified as "confidential" per New York State Policies and Standards found at <http://its.ny.gov/tables/technologypolicyindex.htm>, 2) establish separate bank accounts with the ability to receive and disburse funds both electronically and disbursement by check (as determined by the provider preference), 3) submit two (2), separate monthly clinical services vouchers; one (1) to the Department and one (1) HRI, 4) acquire provider attestation regarding the validity of services provided prior to issuing reimbursement, 5) make payment to providers from discrete bank accounts (one (1) for State funds, one (1) for HRI funds), 6) accounting of payments made, 7) assist with payment reconciliation, and 8) create reports as outlined in the IFB. (see Section C. Detailed Specifications 1.a.). The Department/HRI will review and respond to the workflow documents provided by the payment agent within 16 calendar days of receipt, such that workflow verification and approvals will be completed and full implementation of the payment and reporting will begin within 31 calendar days of the contract start date. The payment agent shall submit a claim for payment (voucher) within 30 calendar days of receipt of Department approval of the workflow documents and completion of workflow verification, to the Department for the workflow development, verification, and implementation fee.
- b) Clinical Services Reimbursements (Department and HRI): The payment agent will submit invoice vouchers within 7 calendar days of receipt of the Monthly Billing Report (MBR) for the previous month's clinical services. The payment agent shall submit the following:

- i. One (1) HRI voucher for the aggregate of the HRI reimbursed clinical services from the MBR.
  - ii. One (1) State claim for payment for the aggregate of the State reimbursed clinical services from the MBR.
- c) Monthly Administrative Service Fee: Once monthly payments are made to health care providers and clinical laboratories, the payment agent will submit Report #2 to the Department as backup documentation to voucher for the payment agent monthly administrative fee (see required report in section C.2.c.ii Report 2). The monthly administrative service fee is a set fee per Monthly Billing Report and will be paid for only the months that the payment agent is reimbursing clinical providers (anticipated to be 33 months). Due to the timing of receipt of the MBR, processing clinical reimbursement vouchers and payments necessary for the payment agent to voucher for a monthly service fee, it is anticipated that reimbursement of the first monthly service fee would not be made to the payment agent until the second or third month after the first payments are made. The reimbursement of additional monthly service fees will follow the same process.
- d) System Closeout Period: The closeout period of the State and HRI contract for the payment agent is anticipated to be the last two (2) months of the contracts (months 35 and 36). After reconciliation of the final MBR, the payment agent will have until the end of the State contract to submit Report 3 (see required report in section C.2 Reporting). Final payment for Report 3 will not be made until Report 3 is completed, received and reviewed by the Department.

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

- i. Preferred Method: Email a pdf copy of your signed voucher to the BSC at: [DOHaccountspayable@ogs.ny.gov](mailto:DOHaccountspayable@ogs.ny.gov) with a subject field as follows:  
  
Subject :< **Unit ID: 3450263**> <<**Contract #**>>
- ii. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health  
Unit ID 3450263 (Contract #)  
PO Box 2093  
Albany, NY 12220-0093**

Payment for invoices and/or vouchers submitted by the VENDOR 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 VENDOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-474-6019. VENDOR acknowledges that it will not receive payment on any invoices

and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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

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

Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be as described above in Section 6 Payments for State contract.

**For the HRI Contract:** the vendor shall adhere to the terms specified in Attachment 14, General Terms and Conditions – Health Research Incorporated (HRI) Contracts. Payment agent HRI invoices and/or vouchers shall be sent to the designated office at the following address:

**Bureau of Chronic Disease Control  
NYS Department of Health  
Riverview Center  
150 Broadway, Suite 350  
Albany, NY 12204**

## 7. TERM OF CONTRACT

The State Contract will become effective upon approval of the NYS Office of the State Comptroller.

The award from this IFB will result in one (1) State and one (1) HRI contract with a term of 36 months, anticipated to begin on the date posted in the Schedule of Key Events on the cover page of this IFB. The commencement and termination dates appearing in the IFB may be adjusted by the State and/or HRI and will be indicated in the notice of award to the winning bidder.

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

**Prices quoted are to be firm for the entire period of the contract. Price escalation will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid, its specifications and subsequent contract award. Price decreases are permitted at any time.**

## 8. DEBRIEFING

Once an award has been made, vendors may request a debriefing of their bid. Please note the debriefing will be limited only to the strengths and weaknesses of the vendor's bid, and will not include any discussion of other bids. Requests will be accepted at the following email address: [canserv@health.state.ny.us](mailto:canserv@health.state.ny.us) and must be received no later than ten (10) business days from date of award or non-award announcement.

## 9. PROTEST PROCEDURES

In the event unsuccessful bidders wish to protest the award resulting from this IFB, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

**The following Sections (Sections 10 through 19) relate to the State Contract. Attachment 14 contains the full list of HRI's contract terms and conditions and is applicable to the HRI contract.**

## 10. VENDOR RESPONSIBILITY QUESTIONNAIRE

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. The winning Bidder must also complete and submit the Vendor Responsibility Attestation (Attachment 7).

## 11. 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:

State Consultant Services Form A: <http://www.osc.state.ny.us/agencies/forms/ac3271s.doc>

State Consultant Services Form B: <http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>

## 12. 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 Offerers. Sections 139-j and 139-k are collectively referred to as “new State Finance Law.”

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

### 13. 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.

### 14. 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://its.ny.gov/eiso/breach-notification>.

## 15. NEW YORK STATE TAX LAW SECTION 5-a

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

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

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

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

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

## 16. PIGGYBACKING

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

17. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMAN 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 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). 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 should 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 calendar days of receipt.
- c) 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 DOH, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- d) New York State Department of Health may disqualify a Bidder as being non- responsive under the following circumstances:
  - i. If a Bidder fails to submit a MWBE Utilization Plan;
  - ii. If a Bidder fails to submit a written remedy to a notice of deficiency;
  - iii. If a Bidder fails to submit a request for waiver; or
  - iv. 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 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **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 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.**

#### 18. IRAN DIVESTMENT ACT

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Department of Health receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Health will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Health shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department of Health reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

## 19. ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidder's should complete Attachment 11 to indicate their intent to use/not use New York Businesses in the performance of this contract.

## F. Appendices

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

- APPENDIX A – Standard Clauses for All New York State Contracts
- APPENDIX B – Invitation for Bids
- APPENDIX C – Proposal

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

- APPENDIX D – General Specifications
- APPENDIX E

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

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

- **DB-155** – Certificate of Disability Benefits Self-Insurance
- APPENDIX G – Notices
- APPENDIX H – Health Insurance Portability and Accountability Act (HIPAA)
- APPENDIX M – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures
- APPENDIX X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

## **G. Attachments**

### **The New York State Contract includes Attachments 1 through 13.**

Attachment 1 –	Maximum Allowable Reimbursement Schedule
Attachment 2 –	Sample Monthly Billing Report
Attachment 3 –	Technical Response Form
Attachment 4 –	Cost Proposal
Attachment 5 –	Vendor Cover Sheet
Attachment 6 –	Reference Submission Form
Attachment 7 –	Vendor Responsibility Attestation
Attachment 8 –	NYS Lobbying Form
Attachment 9 –	No-Bid Form
Attachment 10 –	M/WBE Utilization Plan
Attachment 11 –	Encouraging Use of New York Businesses in Contract Performance
Attachment 12 –	Sample New York State Boilerplate Contract with Appendices

- Appendix A Standard Clauses for New York State Contracts
- Appendix B Invitation for Bids
- Appendix C Proposal
- Appendix D General Specifications
- Appendix E-1 Proof of Workers’ Compensation Coverage
- Appendix E-2 Proof of Disability Insurance Coverage
- Appendix G Notices
- Appendix H Health Insurance Portability and Accountability Act (HIPAA)
- Appendix M Participation by minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
- Appendix X Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

Attachment 13 – Letter of Intent to Bid (Non-Mandatory)

### **The Health Research Incorporated (HRI) contract includes Attachment 14.**

Attachment 14- General Terms and Conditions-Health Research Incorporated (HRI) Contracts

**Attachment 1 - Maximum Allowable Reimbursement Schedule**

<b>New York State Department of Health Cancer Services Program Reimbursement Schedule 4/1/15- 3/31/2016</b>							
	Procedure Code(s)	Guiding CPT Code(s)***	<-----Medicare Regions ----->				
			Upstate 13282-99	Manhattan 13202-01	Rest of Metro 13202-02	Hudson Valley 13202-03	Queens 13292-04
<b>Breast/Cervical Procedures</b>							
Screening mammogram - bilateral (film or digital) **	SIF	77057, G0202	\$87.58*	\$94.63	\$97.57	\$87.84	\$97.11
Screening mammogram - bilateral diagnostic (film or digital) **	SIF	77056, G0204	\$110.79	\$132.98	\$137.14	\$123.31	\$136.43
Screening mammogram - unilateral diagnostic (film or digital) **	SIF	77055, G0206	\$87.20*	\$103.40	\$106.65	\$95.90	\$106.11
Assessment, education and CBE	SIF	99201	\$42.24	\$50.23	\$51.81	\$46.72	\$51.61
Assessment, education and pelvic exam with Pap test	SIF	99201	\$42.24	\$50.23	\$51.81	\$46.72	\$51.61
Repeat CBE	2	Half of 99201	\$21.12	\$25.12	\$25.90	\$23.36	\$25.80
Diagnostic mammogram - unilateral (special views) (film or digital) **	1	77055	\$87.20*	\$103.40	\$106.65	\$95.90	\$106.11
Diagnostic Mammogram- bilateral (special views) (film or digital)**	90	77056	\$110.79	\$132.98	\$137.14	\$123.31	\$136.43
Diagnostic Breast US ( <b>unilateral or bilateral</b> ) w/image documentation	4	76641, 76642	\$104.43	\$126.14	\$130.18	\$116.71	\$129.45
Fine needle aspiration biopsy without image guidance	29	10021	\$144.23	\$175.22	\$181.92	\$162.17	\$180.98

## New York State Department of Health Cancer Services Program Reimbursement Schedule 4/1/15- 3/31/2016

	Procedure Code(s)	Guiding CPT Code(s)**	<-----Medicare Regions ----->				
			Upstate 13282-99	Manhattan 13202-01	Rest of Metro 13202-02	Hudson Valley 13202-03	Queens 13292-04
Fine needle aspiration biopsy with image guidance (includes image guidance)	7	76942+10022	\$195.76	\$235.09	\$243.15	\$218.14	\$242.04
Core biopsy	8	19100	\$146.14	\$181.12	\$189.70	\$167.00	\$188.63
Incisional biopsy	9	19101	\$329.90	\$407.25	\$426.74	\$375.80	\$424.49
Pre-operative ultrasonic needle localization and wire placement	22	19285	\$429.37	\$524.22	\$542.24	\$483.84	\$538.56
additional US needle loc and wire placement for second lesion	85	19286	\$363.90	\$447.12	\$462.91	\$411.94	\$459.47
Pre-operative mammographic needle localization and wire placement	15	19281	\$232.44	\$279.73	\$289.12	\$259.33	\$287.67
additional mammographic needle loc and wire placement second lesion	83	19282	\$162.00	\$197.19	\$204.25	\$182.26	\$203.02
Excisional biopsy	10	19120	\$477.64	\$591.81	\$622.55	\$546.46	\$619.74
Stereotactic biopsy procedure, breast - <b>all inclusive</b> of placement of breast localization device(s), (eg, clip, metallic pellet), imaging of the biopsy specimen, percutaneous bx; first lesion, including stereotactic guidance	16	19081	\$641.53	\$781.01	\$807.97	\$721.54	\$802.82
each additional lesion, including stereotactic guidance	84	19082	\$524.55	\$642.20	\$664.43	\$592.24	\$659.71

## New York State Department of Health Cancer Services Program Reimbursement Schedule 4/1/15- 3/31/2016

	Procedure Code(s)	Guiding CPT Code(s)**	<-----Medicare Regions ----->				
			Upstate 13282-99	Manhattan 13202-01	Rest of Metro 13202-02	Hudson Valley 13202-03	Queens 13292-04
US guided Vacuum-assisted biopsy breast- <b>all inclusive</b> of placement of breast localization device(s) (eg, clip, metallic pellet)imaging of the biopsy specimen, percutaneous bx; first lesion, including ultrasound guidance	25	19083	\$625.37	\$767.89	\$797.32	\$708.25	\$792.06
each additional lesion, including US guidance	86	19084	\$504.82	\$618.18	\$639.59	\$570.05	\$635.02
Mammary ductogram/galactogram	17	77053	\$55.68	\$67.22	\$69.44	\$62.21	\$69.04
Article 28Facility Fee - Core Biopsy	23	APC 0004, 005	\$769.69	\$769.69	\$769.69	\$769.69	\$769.69
Article 28Facility Fee - Incisional/Excisional Biopsy	24	APC 0022	\$1,823.59	\$1,823.59	\$1,823.59	\$ 1,823.59	\$1,823.59
<b>Cervical Diagnostics</b>							
Colposcopy without biopsy	52	57452	\$106.30	\$127.71	\$132.82	\$118.69	\$132.39
Colposcopy with cervical biopsy and ECC	66	57454	\$149.58	\$178.39	\$185.25	\$166.11	\$184.77
Colposcopy with one or more cervical biopsies	53	57455	\$139.65	\$167.47	\$174.05	\$155.69	\$173.50
Colposcopy with ECC	67	57456	\$131.46	\$157.39	\$163.41	\$146.36	\$162.89
Endometrial biopsy	68	58100	\$106.16	\$126.75	\$131.49	\$117.94	\$131.10
HPV HIGH RISK types only ( no additional reimbursement for Genotyping)	65	87624	\$47.76	\$47.76	\$47.76	\$47.76	\$47.76

## New York State Department of Health Cancer Services Program Reimbursement Schedule 4/1/15- 3/31/2016

	Procedure Code(s)	Guiding CPT Code(s)**	<-----Medicare Regions ----->				
			Upstate 13282-99	Manhattan 13202-01	Rest of Metro 13202-02	Hudson Valley 13202-03	Queens 13292-04
Pap smear cytology, conventional	SIF61	88164, 88165	\$14.38	\$14.38	\$14.38	\$14.38	\$14.38
Pap smear cytology, liquid based prep	SIF71	88141-88143, 88174-88175	\$27.57	\$27.57	\$27.57	\$27.57	\$27.57
Fluid cytology, Breast and nipple, (Not vaginal / cervical)	11,14	88173	\$145.80	\$171.94	\$176.26	\$160.08	\$175.52
Diagnostic LEEP/LEETZ	56	57461	\$309.82	\$373.94	\$388.20	\$346.80	\$386.52
Diagnostic Cone Biopsy- Cold knife or Laser	CKC 57, LC 58	57520	\$298.34	\$359.70	\$374.50	\$334.01	\$373.21
Article 28 Facility Fee - Diagnostic LEEP/LEETZ, etc.	69	APC 0193	\$1,845.47	\$1,845.47	\$1,845.47	\$ 1,845.47	\$1,845.47
<b>Colorectal Procedures</b>							
FOBT Kit Processing	SIF	82270	\$4.43	\$4.43	\$4.43	\$ 4.43	\$4.43
FIT	SIF	G0328, 82274	\$16.95	\$21.65	\$21.65	\$21.65	\$21.65
Colonoscopy	36	45378 or G0121 or G0105	\$365.45	\$446.10	\$464.39	\$412.56	\$462.00
Colonoscopy w/biopsy single or multiple	37	45380	\$449.67	\$546.11	\$567.66	\$505.66	\$564.91
Colonoscopy w/removal of tumor(s), polyp(s) by hot biopsy	38	45384	\$450.67	\$547.99	\$570.32	\$507.39	\$567.64

## New York State Department of Health Cancer Services Program Reimbursement Schedule 4/1/15- 3/31/2016

	Procedure Code(s)	Guiding CPT Code(s)**	<-----Medicare Regions ----->				
			Upstate 13282-99	Manhattan 13202-01	Rest of Metro 13202-02	Hudson Valley 13202-03	Queens 13292-04
Colonoscopy w/removal of tumor(s), polyp(s) by snare technique	39	45385	\$507.97	\$616.26	\$640.75	\$570.85	\$637.79
Sigmoidoscopy	32	45330	\$133.01	\$162.50	\$168.82	\$150.15	\$167.84
Sigmoidoscopy with polypectomy	33	45333	\$287.45	\$352.06	\$365.70	\$325.02	\$363.41
Flexible sigmoidoscopy with biopsy	34	45331	\$157.91	\$192.63	\$199.99	\$178.04	\$198.81
Radiological exam; colon, barium enema	35	74270	\$142.94	\$173.60	\$179.33	\$160.44	\$178.18
2nd Technique- Colonoscopy dir bx	50	N/A	\$103.99	\$124.02	\$128.52	\$115.41	\$128.11
Article 28 Facility Fee - Colonoscopy	49	APC 0158	\$674.78	\$674.78	\$674.78	\$674.78	\$674.78
Article 28 Facility Fee - Sigmoidoscopy	48	APC 0146	\$468.73	\$468.73	\$468.73	\$468.73	\$468.73
<b>Other Procedures</b>							
Surgical consultation	3, 54,43	99203	\$104.85	\$124.68	\$128.76	\$116.07	\$128.56
Anesthesiologist fee	18, 70, 41	N/A	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00
Chest X-ray	19, 62, 45	71020	\$26.66	\$32.09	\$33.15	\$29.74	\$32.98
CBC - Complete Blood Count pre-operative testing	21, 64, 47	85025	\$10.52	\$10.58	\$10.58	\$10.58	\$10.58
EKG	20, 63, 46	93000	\$16.42	\$19.77	\$20.48	\$18.34	\$20.39
Surgical pathology - Level IV-Gross and	12, 59, 42	88305	\$70.27	\$82.51	\$84.53	\$76.91	\$84.21

## New York State Department of Health Cancer Services Program Reimbursement Schedule 4/1/15- 3/31/2016

New York State Department of Health Cancer Services Program Reimbursement Schedule 4/1/15- 3/31/2016							
	Procedure Code(s)	Guiding CPT Code(s)**	<-----Medicare Regions ----->				
			Upstate 13282-99	Manhattan 13202-01	Rest of Metro 13202-02	Hudson Valley 13202-03	Queens 13292-04
microscopic							
Surgical pathology - Level IV- needing examination of surgical margins; some excisional, LEEP, Cone, and some polyps	82, 87, 88	88307	\$292.09	\$351.74	\$362.20	\$325.66	\$360.01
<b>HIGH RISK WOMEN ONLY WITH PRIOR APPROVAL and Program Funds Entered Only by NYSDOH CSP Staff - Not in Effect Until Program indicates a start date.</b>							
Bilateral Screening MRI w or w/ocontrast	SIF	77059	\$509.91	\$623.05	\$644.09	\$574.81	\$639.55
Unilateral Screening MRI w or w/ocontrast	SIF	77058	\$515.32	\$629.74	\$651.01	\$580.95	\$646.41
Bilateral Diagnostic MRI w or w/ocontrast	26	77059	\$509.91	\$623.05	\$644.09	\$574.81	\$639.55
Unilateral Diagnostic MRI w or w/ocontrast	89	77058	\$515.32	\$629.74	\$651.01	\$580.95	\$646.41
<p>* Reimbursement rates are the higher of either the NY regional Medicare rate or the NYS Medicaid fee.</p> <p>** NYS provides reimbursement for digital mammography and or mammography with CAD at the conventional film rate.</p> <p>*** These CPT codes are for reference only. Reimbursement is not limited to these CPT codes. Other CPT codes that fulfill the service/procedure as listed may also be reimbursed at these rates.</p>							

## Attachment 2 – Sample Monthly Billing Report

### NYS Department of Health Cancer Services Program

#### MONTHLY BILLING REPORT

March 01, 2013 to March 31, 2013

**CSP SCREENING CONTRACTOR: CSP of Any County**

Client Name	Age	DOB	Client #	Service	Date of Service	Procedure	Fund	Rate
				Site*	Procedure		Source	
Frank, Judy	50	7/22/1962	992262407	995836	3/6/2013	FIT Test	C	\$ 17.64
Smith, Jane	55	7/15/1957	991557482	995803	3/18/2013	Bilateral Screening Mammogram	F	\$ 87.58
Blue, Susan	49	4/24/1963	992262508	995844	3/4/2013	PAP Smear Exam	F	\$ 36.39
Blue, Susan	49	4/24/1963	992262508	995844	3/4/2013	Clinical Breast Examination	F	\$ 36.39
Blue, Susan	49	4/24/1963	992262508	995803	3/4/2013	Bilateral Screening Mammogram	F	\$ 87.58
James, Lola	59	3/11/1954	992263301	995803	1/23/2013	Diagnostic Mammogram	F	\$ (87.20)
Ortiz, Maria	53	10/9/1959	992262603	995803	3/10/2013	Diagnostic Mammogram	F	\$ 87.20
Blue, Susan	49	4/24/1963	992262508	995822	3/4/2013	PAP Cytology-Liquid Based	S	\$ 26.24
Ortiz, Maria	53	10/9/1959	992262603	995822	3/10/2013	HR HPV Test	S	\$ 49.71
Doe, Debra	40	3/2/1973	992263402	995821	2/28/2013	Article 28 Facility Fee for Core Biopsy	S	\$513.50
Ortiz, Maria	53	10/9/1959	992262603	995822	3/10/2013	Histology/Breast Tissue	S	\$ 90.63

Legend for Fund Source: F - BCC HRI Funds, S - State Funds, P - Pending Allocation, C - Colorectal HRI Funds

\*Service Site numbers correlate with credentialed providers.

NOTE: All names and details are fictitious.

### Attachment 3 - Technical Response Form

**Bidder:**

Please answer the following questions and provide the details as requested (maximum 20 pages):

<b>Section D Proposal; 1. Minimum Bidder Qualifications</b>	<b>YES</b>	<b>NO</b>
<p>1) Do you have the required experience listed in Section D. Proposal, 1. Minimum Bidder Qualifications Part a.?</p> <p>If yes:</p> <p>Describe three (3) years of experience providing timely and accurate payment processing services including a volume of 350 or more payments a month in which you were responsible for maintenance of accurate and complete payment and accounting records to monitor and reconcile payments/funds and the submission of detailed monthly, quarterly and year-end fiscal reports. <b>Details should be provided in narrative form and submitted as part of the technical response form. Complete and attach the Reference Submission Form (Attachment 6) identifying three (3) references The references may be contacted to verify experience.</b></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2) Are the payment agent offices and staff to be located in the continental United States throughout the term of the contract?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3) Does the Bidder confirm compliance with the security requirements, including breach/incident reporting available at: <a href="http://its.ny.gov/tables/technologypolicyindex.htm">http://its.ny.gov/tables/technologypolicyindex.htm</a>.</p> <p><b>If yes:</b></p> <p>Include a statement below indicating the bidder will comply with Department security requirements.</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Section C. Detailed Specifications</b>	<b>YES</b>	<b>NO</b>
<p>4) Do you currently have systems in place to provide the services detailed in Section C. Detailed Specifications, items 1 and 2 of this IFB?</p> <p>If yes:</p> <p>Describe the systems you currently have in place and how you will be able to meet the detailed specifications in Section C, items 1 and 2. <b>Details should be provided in narrative form and submitted as part of the technical response form.</b></p> <p>If no:</p> <p>Describe how you will develop a system to provide the required Detailed Specifications in Section C, items 1 and 2.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5) Are there any known subcontractors to be utilized in this procurement?</p> <p>If yes:</p> <p>Identify all known subcontractors that will be utilized in this procurement. <b>Details should be provided in narrative form and submitted as part of the technical response form.</b></p>	<input type="checkbox"/>	<input type="checkbox"/>

### Attachment 4 - COST PROPOSAL

The vendor will provide payment agent services as outlined in Section C. Detailed Specifications. Use shaded cells to provide each price. The bid prices reflect all costs, including but not limited to those associated with personnel, travel, materials and services, and miscellaneous expenses. Please complete bid prices in whole numbers. **Please refer to Section D Proposal, 3 for instructions and requirements for submitting the cost proposal.**

<b>1. Workflow Implementation and Verification.</b> See Detailed Specifications, C, 1, a. *Total cost for Workflow Development, Verification and Implementation fee must not exceed two times the price of the <b>Monthly Administrative Service Fee for the range of 1-350 payments per month</b> (#2 below). Bids with a price that exceeds this amount will be disqualified.			
<b>Total Workflow Development, Implementation and Verification* fee.</b>			<b>A</b> \$ _____
<b>2. Monthly Administrative Service Fee</b> for direct reimbursement to health care providers and clinical laboratories for the anticipated period of 33 months. See Detailed Specifications, C, 1, b.			
<b>CSP Screening Contractors</b>	<b>Estimated Providers/Laboratories qualifying for payment each month</b>	<b>Payments Range/Month**</b>	
6	125	1-350	<b>Monthly Administrative Service Fee.</b>  <div style="text-align: right; padding-right: 20px;">Monthly Fee \$ _____</div> <div style="text-align: right;">Total: Monthly Fee X 33 months <b>B</b> \$ _____</div>
<b>3. System Closeout</b> – Please see Detailed Specifications C, 2 Reporting, iii.			
			<b>Total cost for system closeout work.</b> <b>C</b> \$ _____
			<b>Grand Total Bid ( A + B + C )</b> \$ _____

\*\* The administrative fee paid will be based on the number of payments for any given month. It is currently estimated that approximately 250 checks per month will be written (estimated 125 State payments and 125 HRI payments). However, that number may be higher or lower in any given month.

**Authorized Vendor Signature:** Typed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Prices quoted are to be firm for the entire period of the contract. Price escalation will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid, its specifications and subsequent contract award. Price decreases are permitted at any time.

**Attachment 5 - Vendor Cover Sheet**

<b>Name of Company:</b>		<b>Federal Tax ID Number:</b>	<b>Dunn &amp; Bradstreet Number:</b>
<b>Company Address:</b>		<b>Vendor Identification Number</b>	
<b>Name of Company Official Submitting Bid:</b>		<b>Title:</b>	
<b>Authorized Signature:</b>		<b>Date:</b>	
<b>Phone</b>		<b>Extension</b>	
<b>Toll Free Phone:</b>		<b>Extension:</b>	
<b>Fax:</b>		<b>Extension:</b>	
<b>E-Mail Address:</b>			
<b>Company Web Site:</b>			

**Person or Persons to contact for expediting New York State Contract Orders:**

<b>Name(s):</b>	
<b>Phone:</b>	<b>Extension:</b>
<b>Toll Free Phone:</b>	<b>Extension:</b>
<b>Fax:</b>	<b>Extension:</b>
<b>E-Mail Address(es) :</b>	

## Attachment 6 – Reference Submission Form

**Bidder:** \_\_\_\_\_

The New York State Department of Health, Division of Chronic Disease Prevention will contact references to verify the **Section D Proposal, 1. Minimum Bidder Qualifications**. Please ensure the contact information provided for each reference is accurate and up-to-date.

### Provide Three References

#### Reference #1

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Organization Name \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

#### Reference #2

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Organization Name \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

#### Reference #3

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Organization Name \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

## Attachment 7 - Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section E, Administrative, 10. Vendor Responsibility Questionnaire, I hereby certify:

**Choose one:**

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

**Signature of Applicant Organization Official:** \_\_\_\_\_

**Print/Type Name:**

**Title:**

**Applicant Organization Address:**

**City**

**State**

**Zip**

**E-Mail Address (Required):**

**Telephone:**

**Fax:**

**Date Signed:**



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)

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

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

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

\_\_\_\_\_  
(E-mail Address)

**Attachment 9**

**NEW YORK STATE  
DEPARTMENT OF HEALTH**

**NO-BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ IFB # \_\_\_\_\_

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

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

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

- Please retain our firm on your mailing list.

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

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

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

\_\_\_\_\_  
(E-mail Address)

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

## Attachment 10

### NEW YORK STATE DOH M/WBE RFP REQUIRED FORMS

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

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

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

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

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

#### Form#4 – MWBE Staffing Plan

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

#### Form#5 – EEO and MWBE Policy Statement

This is a standard EEO policy that needs to be signed and dated and submitted. If Bidder has their own EEO policy it may be submitted instead of endorsing this document.

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

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

<b>Bidder/Contractor Name:</b>	
<b>Vendor ID:</b>	<b>Telephone No.</b>
<b>RFP/Contract Title: Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies, Nursing Homes, Intermediate Care Facilities and Psychiatric Residential Treatment Facilities</b>	<b>RFP/Contract No. 16113</b>

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

**PROJECTED M/WBE USAGE**

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

“Making false representation or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization.”

**New York State Department of Health  
 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
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____

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

<b>Offeror/Contractor Name:</b>		<b>Federal Identification No.:</b>	
<b>Address:</b>		<b>Solicitation/Contract No.:</b> RFP 16113	
<b>City, State, Zip Code:</b>		<b>M/WBE Goal: MBE % WBE %</b> (From Lines 2 and 3 from Form #1)	
<b>By submitting this form and the required information, the officer or/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</b>			
<b>Contractor is requesting a:</b> <input type="checkbox"/> <b>MBE Waiver</b> – A waiver of the MBE Goal for this procurement is requested. <b>Total Partial</b> <input type="checkbox"/> <b>WBE Waiver</b> – A waiver of the WBE Goal for this procurement is requested. <b>Total Partial</b> <input type="checkbox"/> <b>Waiver Pending ESD Certification</b> – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) <b>Date of such filing with Empire State Development:</b>			
<b>PREPARED BY (Signature)</b>		<b>Date:</b>	
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.			
<b>Name and Title of Preparer (Printed or Typed):</b>		<b>Telephone Number:</b>	<b>Email Address:</b>
<b>Submit with the bid or proposal or if submitting after award submit to:</b> <a href="mailto:doh.sm.mwbe@health.ny.gov">doh.sm.mwbe@health.ny.gov</a>		<b>***** FOR DMWBD USE ONLY *****</b>	
		<b>REVIEWED BY:</b>	<b>DATE:</b>
		<b>Waiver Granted: <input type="checkbox"/>YES <input type="checkbox"/>NO</b> <b>MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></b> <input type="checkbox"/> <b>Total Waiver</b> <span style="float:right"><input type="checkbox"/> <b>Partial Waiver</b></span> <input type="checkbox"/> <b>ESD Certification Waiver</b> <input type="checkbox"/> <b>*Conditional</b> <input type="checkbox"/> <b>Notice of Deficiency Issued</b>  <b>*Comments:</b> _____	

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

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

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

Address \_\_\_\_\_

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

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

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

\_\_\_\_\_  
Date

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

**M/WBE AND EEO POLICY STATEMENT**

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

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good

faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

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

**EEO**

(a) This organization will not discriminate against any employee or applicant for

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

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

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

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

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

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

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

## DETAILED MWBE FORMS INSTRUCTIONS

### Miscellaneous Specific

#### Form #1 – MWBE Utilization Plan

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

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

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

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

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

**Line #3 - WBE Goal Applied to the Contract**– Bidder/Contractor lists the amount to be paid to a Certified Woman-owned Business Enterprise and states the percentage this amount is of the Total Value listed on Line #1.

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

**Line #4 - MWBE Combined totals** - Bidder/Contractor totals Line #2 and Line #3 for both Percentage and Amount to state the Combined M&W percentages and Combined M&W amount.

*Example:* Using the above Line #2 and Line #3 examples for payment data, Bidder/Contractor achieves a combined MWBE % of 30% and a combined MWBE amount of \$300,000. (15%M and 15%W; \$150,000M + \$150,000W). MWBE combined Total/Total Dollar Value Eligible = the MWBE % (300,000/1,000,000 = 30%).

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

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

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

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

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

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

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

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

**Form #2 – MWBE Utilization Waiver Request**

“Form#1 MWBE Utilization Plans” that commit to a goal % less than the stated MWBE goal percentage in procurement must be accompanied by a “Form#2 MWBE Utilization Waiver Request”. A Bidder/Contractor may qualify for a partial or total waiver of the MWBE goal requirements established on a State contract only upon the submission of a waiver form by a Bidder/Contractor, documenting good-faith efforts by the Contractor to meet the goal requirements of the state contract and a consideration of applicable factors. The ability to subcontract with M/WBEs and separately the ability to purchase from M/WBEs must be addressed in attachments on all waiver requests.

Fill out the header with the name of the Bidder/Contractor requesting the waiver under Offeror/Contractor Name, include your Federal Identification ID, Address, Solicitation/Contract Number, and M/WBE Goals. Check off the appropriate box for the type of waiver that is being requested and whether it is a total or partial waiver. If the Waiver is Pending ESD Certification, meaning the subcontractor has applied for certification with Empire State Development, check off that box and state the date that they applied for certification. Directly below the Pending ESD Certification area, sign and date the waiver. Provide the name of the preparer as well as a telephone number and email address (Bidder/Contractor direct contact number of person authorized to discuss submission).

The following attachments should be provided:

1. A statement setting forth your basis for requesting a partial or total waiver. The statement should at a minimum include the services being subcontracted out and why a portion of those services cannot be subcontracted to certified MWBE(s). In addition, statement must also include what purchases of equipment and supplies are being made and why those purchases cannot be provided by certified MWBE(s).
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals related to this contract.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses to your solicitations received by you from certified M/WBEs.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Bidder/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

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

## Attachment 11

### Encouraging Use of New York Businesses in Contract Performance

#### I. Background

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing service and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

#### II. Required Identifying Information

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

\_\_\_\_      \_\_\_\_  
YES      NO

If yes, identify New York State businesses that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.



**Attachment 12**  
**MISCELLANEOUS / CONSULTANT SERVICES**

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

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

\_\_\_\_\_  
CONTRACTOR (Name and Address):

\_\_\_\_\_  
TYPE OF PROGRAM(S):

\_\_\_\_\_  
CHARITIES REGISTRATION NUMBER:

\_\_\_\_\_  
CONTRACT TERM

FROM:  
TO:

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

FUNDING AMOUNT FOR CONTRACT  
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

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

NYS VENDOR IDENTIFICATION NUMBER:

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

MUNICIPALITY NO. (if applicable)

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

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

**BID OPENING DATE:**

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

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

Contract No.: C#



GLBU: DOH01  
APPENDIX X

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

Contractor: \_\_\_\_\_

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

BSC Unit ID: 345<XXXX>\_\_\_\_\_

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

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

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

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

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

Additionally, Contractor certifies that it is not included on the prohibited entities list published at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

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

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

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

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

This will result in new contract terms of:

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

Revised 6/3/2013

Signature Page for:

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

Contractor: \_\_\_\_\_

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

BSC Unit ID: 345<XXXX>

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

**CONTRACTOR SIGNATURE:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

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

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

STATE OF NEW YORK )  
 ) SS:  
County of \_\_\_\_\_ )

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

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

-----  
**STATE AGENCY SIGNATURE**

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

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

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

-----  
**ATTORNEY GENERAL'S SIGNATURE**

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

**STATE COMPTROLLER'S SIGNATURE**

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

Revised 6/3/2013

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE**

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**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

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

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

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

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

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

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of

perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award

## 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 "Invitation For Bid" and "IFB" include all Appendix B documents as marked on the face page hereof.
  - G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.
- II. Payment and Reporting

A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [DOHaccounts payable@ogs.ny.gov](mailto:DOHaccounts payable@ogs.ny.gov) with a subject field as follows:  
Subject: <<Unit ID: 345XXXX>> <<Contract #>>

(Note: **do not** send a paper copy in addition to your emailed voucher.)

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

**NYS Department of Health  
Unit ID 345<<xxxx>>  
PO Box 2093  
Albany, NY 12220-0093**

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

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov) or by telephone at 1-855-233-8363. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

### III. Term of Contract

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

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

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

#### IV. Proof of Coverage

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

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

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 Invitation For Bid. 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 Invitation for Bid (IFB) 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 IFB 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 IFB 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 IFB shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this IFB 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 or property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
    - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
    - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
    - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

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

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

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

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.

- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
  - h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
  - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Y. Confidentiality Clauses

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

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

Z. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
  - a. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; and
  - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and
  - c. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.

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

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

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

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
3. Termination (for Non-Responsibility) : Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

EE. Provisions Related to Iran Divestment Act As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract. During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

## Appendix H Department HIPAA-Covered Program

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 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

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

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

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

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

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

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

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

- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

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

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

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

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

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

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

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

#### **V. Waivers**

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

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

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

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

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.

**ATTACHMENT 13 – Letter of Intent to Bid- (Non–Mandatory)**

**Please email this Letter of Intent to Bid to the email address below by the date specified in the Schedule of Key Events on the IFB cover page.**

Wendy Gould  
New York State Department of Health  
Bureau of Chronic Disease Control  
150 Broadway  
Riverview Center, Room 350  
Albany, NY 12204  
Email: [canserv@health.state.ny.us](mailto:canserv@health.state.ny.us)

Dear M\_\_\_\_\_:

\_\_\_\_\_ has received the New York State Department of Health Information For Bid for the **Cancer Services Program (CSP); Integrated Breast, Cervical and Colorectal Cancer Screening Program Payment Agent**.

We intend to submit a bid for the **Cancer Services Program (CSP); Integrated Breast, Cervical and Colorectal Cancer Screening Program Payment Agent** to the New York State Department of Health Bureau of Chronic Disease Control Program, not later than the proposal due date and time as outlined on the cover page of the IFB.

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Official Representative if different from above

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
E-mail

## **ATTACHMENT 14**

### **HRI General Terms and Conditions - Health Research Incorporated Contracts (Rev.12/24/2014)**

1. **Term** - This Agreement shall be effective and allowable costs may be incurred by the Contractor from the Contract Start Date through the Contract End Date, (hereinafter, the "Term") unless terminated sooner as hereinafter provided or extended by mutual agreement of the parties.
  
2. **Allowable Costs/Contract Amount –**
  - a) In consideration of the Contractor's performance under this Agreement, HRI shall reimburse the Contractor for allowable costs incurred in performing the Scope of Work, which is attached hereto as Exhibit A, in accordance with the terms and subject to the limits of this Agreement.
  
  - b) It is expressly understood and agreed that the aggregate of all allowable costs under the Agreement shall in no event exceed the Total Contract Amount, except upon formal amendment of this Agreement as provided herein below.
  
  - c) The allowable cost of performing the work under this Agreement shall be the costs approved in the Budget attached hereto as Exhibit B and actually incurred by the Contractor, either directly incident or properly allocable, to the Agreement, in the performance of the Scope of Work in accordance with cost principles of the Department of Health and Human Services Grants Policy Statement (HHS GPS). To be allowable, a cost must be necessary, cost-effective and consistent (as reasonably determined by HRI) with policies and procedures that apply uniformly to both the activities funded under this Agreement and other activities of the Contractor. Contractor shall supply documentation of such policies and procedures to HRI when requested.
  
  - d) Irrespective of whether the "Audit Requirements" specified in paragraph 3(a) are applicable to this Agreement, all accounts and records of cost relating to this Agreement shall be subject to audit by HRI or its duly authorized representative(s) and/or the Project Sponsor during the Term and for three years after the final voucher is submitted for payment. This provision includes the right for HRI to request copies of source documentation in support of any costs claimed. If an audit is started before the expiration of the 3-year period, the records must be retained until all findings involving the records have been resolved and final action taken. Any reimbursement made by HRI under this Agreement shall be subject to retroactive correction and adjustment upon such audits. The Contractor agrees to repay HRI promptly any amount(s) determined on audit to have been incorrectly paid. HRI retains the right, to the extent not prohibited by law or its agreements with the applicable Project Sponsor(s) to recoup any amounts required to be repaid by the Contractor to HRI by offsetting those amounts against amounts due to the Contractor from HRI pursuant to this or other agreements. The Contractor shall maintain appropriate and complete accounts, records, documents, and other evidence showing the support for all costs incurred under this Agreement.
  
3. **Administrative, Financial and Audit Regulations –**
  - a) This Agreement shall be audited, administered, and allowable costs shall be determined in accordance with the terms of this Agreement and the requirements and principles applicable to the Contractor as noted below, including, but not limited to, the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (referred to herein as the "Uniform Guidance") as codified in Title 2 of the Code of Federal Regulations. The federal regulations specified below apply to the Contractor (excepting the "Audit Requirements," which apply to federally- funded projects only), regardless of the source of the funding specified (federal/non-federal) on the face page of this Agreement. For non-federally funded projects any right granted by the regulation to the federal sponsor shall be deemed granted to the Project Sponsor. It is understood that a Project Sponsor may impose restrictions/requirements beyond those noted below in which case such restrictions/requirements will be noted in Attachment B Program Specific Clauses.

<b>Contractor Type</b>	<b>Administrative Requirements</b>	<b>Cost Principles</b>	<b>Audit Requirements Federally Funded Only</b>
College or University	Uniform Guidance	Uniform Guidance	Uniform Guidance
Not-for-Profit	Uniform Guidance	Uniform Guidance	Uniform Guidance
State, Local Gov. or Indian Tribe	Uniform Guidance	Uniform Guidance	Uniform Guidance
For-Profit	45 CFR Part 74	48 CFR Part 31.2	Uniform Guidance
Hospitals	2 CFR Part 215	45 CFR Part 74	Uniform Guidance

b) If this Agreement is federally funded, the Contractor will provide copies of audit reports required under any of the above audit requirements to HRI within 30 days after completion of the audit.

#### 4. Payments -

- a) No payments will be made by HRI until such time as HRI is in receipt of the following items:
- Insurance Certificates pursuant to Article 9;
  - A copy of the Contractor's latest audited financial statements (including management letter if requested);
  - A copy of the Contractor's most recent 990 or Corporate Tax Return;
  - A copy of the Contractor's approved federal indirect cost rate(s) and fringe benefit rate (the "federal rates"); or documentation (which is acceptable to HRI) which shows the Contractor's methodology for allocating these costs to this Agreement. If, at any time during the Term the federal rates are lower than those approved for this Agreement, the rates applicable to this Agreement will be reduced to the federal rates;
  - A copy of the Contractor's time and effort reporting system procedures (which are compliant with the Uniform Guidance) if salaries and wages are approved in the Budget.
  - A copy of equipment policy if equipment is in the approved budget.
  - Further documentation as requested by HRI to establish the Contractor's fiscal and programmatic capability to perform under this Agreement.

Unless and until the above items are submitted to and accepted by HRI, the Contractor will incur otherwise allowable costs at its own risk and without agreement that such costs will be reimbursed by HRI pursuant to the terms of this Agreement. No payments, which would otherwise be due under this Agreement, will be due by HRI until such time, if ever, as the above items are submitted to and accepted by HRI.

- b) The Contractor shall submit voucher claims and reports of expenditures at the Required Voucher Frequency noted on the face page of this Agreement, in such form and manner, as HRI shall require. HRI will reimburse Contractor upon receipt of expense vouchers pursuant to the Budget in Exhibit B, so long as Contractor has adhered to all the terms of this Agreement and provided the reimbursement is not disallowed or disallowable under the terms of this Agreement. All information required on the voucher must be provided or HRI may pay or disallow the costs at its discretion. HRI reserves the right to request additional back up documentation on any voucher submitted. Further, all vouchers must be received within thirty (30) days of the end of each period defined as the Required Voucher Frequency (i.e. each month, each quarter). Contractor shall submit a final voucher designated by the Contractor as the "Completion Voucher" no later than sixty (60) days from termination of the Agreement. Vouchers received after the 60 day period may be paid or disallowed at the discretion of HRI.

- c) The Contractor agrees that if it shall receive or accrue any refunds, rebates, credits or other amounts (including any interest thereon) that relate to costs for which the Contractor has been reimbursed by HRI under this Agreement it shall notify HRI of that fact and shall pay or, where appropriate, credit HRI those amounts.
- d) The Contractor represents, warrants and certifies that reimbursement claimed by the Contractor under this Agreement shall not duplicate reimbursement received from other sources, including, but not limited to client fees, private insurance, public donations, grants, legislative funding from units of government, or any other source. The terms of this paragraph shall be deemed continuing representations upon which HRI has relied in entering into and which are the essences of its agreements herein.

**5. Termination** - Either party may terminate this Agreement with or without cause at any time by giving thirty (30) days written notice to the other party. HRI may terminate this Agreement immediately upon written notice to the Contractor in the event of a material breach of this Agreement by the Contractor. It is understood and agreed, however, that in the event that Contractor is in default upon any of its obligations hereunder at the time of any termination, such right of termination shall be in addition to any other rights or remedies which HRI may have against Contractor by reason of such default. Upon termination of the Agreement by either party for any reason, Contractor shall immediately turn over to HRI any works in progress, materials, and deliverables (whether completed or not) related to the services performed up to the date of termination.

**6. Representations and Warranties** – Contractor represents and warrants that:

- a) it has the full right and authority to enter into and perform under this Agreement;
- b) it will perform the services set forth in Exhibit A in a workmanlike manner consistent with applicable industry practices;
- c) the services, work products, and deliverables provided by Contractor will conform to the specifications in Exhibit A;
- d) there is no pending or threatened claim or litigation that would have a material adverse impact on its ability to perform as required by this Agreement.

**7. Indemnity** - To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend HRI, its agents and employees, the New York State Department of Health, and the People of the State of New York against all claims, damages, losses or expenses including but not limited to attorneys' fees arising out of or resulting from the performance of the agreement, provided any such claim, damage, loss or expense arises out of, or in connection with, any act or omission by Contractor, or anyone directly or indirectly employed or contracted by Contractor, in the performance of services under this Agreement, and such acts or omissions (i) constitute negligence, willful misconduct, or fraud; (ii) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from; (iii) cause the breach of any confidentiality obligations set forth herein; (iv) relate to any claim for compensation and payment by any employee or agent of Contractor; (v) result in intellectual property infringement or misappropriation by Contractor, its employees, agents, or subcontractors; or (vi) are violations of regulatory or statutory provisions of the New York State Labor Law, OSHA or other governing rule or applicable law. The obligation of the Contractor to indemnify any party under this paragraph shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits including workers' compensation or other employee benefit acts provided by the Contractor. In all subcontracts entered into by the Contractor related to performance under this Agreement, the Contractor will include a provision requiring the subcontractor to provide the same indemnity and hold harmless to the indemnified parties specified in this paragraph.

## **8. Amendments/Budget Changes –**

- a) This Agreement may be changed, amended, modified or extended only by mutual consent of the parties provided that such consent shall be in writing and executed by the parties hereto prior to the time such change shall take effect, with the exception of changes and amendments that are made mandatory by the Project Sponsor under the sponsoring grant/contract, which will take effect in accordance with the Project Sponsor's requirements and schedule.
- b) In no event shall there be expenses charged to a restricted budget category without prior written consent of HRI.
- c) The Budget Flexibility Percentage indicates the percent change allowable in each category of the Budget, with the exception of a restricted budget category. As with any desired change to this Agreement, budget category deviations exceeding the Budget Flexibility Percentage in any category of the Budget are not permitted unless approved in writing by HRI. In no way shall the Budget Flexibility Percentage be construed to allow the Contractor to exceed the Total Contract Amount less the restricted budget line, nor shall it be construed to permit charging of any unallowable expense to any budget category. An otherwise allowable charge is disallowed if the charge amount plus any Budget Flexibility Percentage exceeds the amount of the budget category for that cost.

## **9. Insurance –**

- a) The Contractor shall maintain or cause to be maintained, throughout the Term, insurance or self-insurance equivalents of the types and in the amounts specified in section b) below. Certificates of Insurance shall evidence all such insurance. It is expressly understood that the coverage's and limits referred to herein shall not in any way limit the liability of the Contractor. The Contractor shall include a provision in all subcontracts requiring the subcontractor to maintain the same types and amounts of insurance specified in b) below.
- b) The Contractor shall purchase and maintain at a minimum the following types of insurance coverage and limits of liability:
  - 1) Commercial General Liability (CGL) with limits of insurance of not less than \$1,000,000 each Occurrence and \$2,000,000 Annual Aggregate. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project. HRI and the People of the State of New York shall be included as Additional Insureds on the Contractor's CGL, using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to the Additional Insureds. The CGL insurance for the Additional Insureds shall be as broad as the coverage provided for the Named Insured Contractor. It shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds.
  - 2) Business Automobile Liability (AL) with limits of insurance of not less than \$1,000,000 each accident. AL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. HRI and the People of the State of New York shall be included as Additional Insureds on the Contractor's AL policy. The AL coverage for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds.
  - 3) Workers Compensation (WC) & Employers Liability (EL) with limits of insurance of not less than \$100,000 each accident for bodily injury by accident and \$100,000 each employee for injury by disease.

- 4) If specified by HRI, Professional Liability Insurance with limits of liability of \$1,000,000 each occurrence and \$3,000,000 aggregate.
- c) Provide that such policy may not be canceled or modified until at least 30 days after receipt by HRI of written notice thereof; and
- d) Be reasonably satisfactory to HRI in all other respects.

#### **10. Publications and Conferences –**

- a) All written materials, publications, journal articles, audio-visuals that are either presentations of, or products of the Scope of Work which are authorized for publication or public dissemination, subject to the confidentiality restrictions herein, will acknowledge HRI, the New York State Department of Health (DOH) and the Project Sponsor and will specifically reference the Sponsor Reference Number as the contract/grant funding the work with a disclaimer, as appropriate, such as: “The content of this publication (journal article, etc.) is solely the responsibility of the authors and does not necessarily represent the official views of HRI or the Project Sponsor. This requirement shall be in addition to any publication requirements or provisions specified in Attachment B – Program Specific Clauses.
- b) Conference Disclaimer: Where a conference is funded by a grant, cooperative agreement, sub-grant and/or a contract the recipient must include the following statement on conference materials, including promotional materials, agenda, and Internet sites, “Funding for this conference was made possible (in part) by the <insert Project Sponsor name>. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of HRI, NYS Department of Health or the Project Sponsor, nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.”

Use of Logos: In order to avoid confusion as to the conference source or a false appearance of Government, HRI or DOH endorsement, the Project Sponsor, HRI and/or DOH’s logos may not be used on conference materials without the advance, express written consent of the Project Sponsor, HRI and/or DOH.

#### **11. Title -**

- a) Unless noted otherwise in an attachment to this Agreement, title to all equipment purchased by the Contractor with funds from this Agreement will remain with Contractor. Notwithstanding the foregoing, at any point during the Term or within 180 days after the expiration of the Term, HRI may require, upon written notice to the Contractor, that the Contractor transfer title to some or all of such equipment to HRI. The Contractor agrees to expeditiously take all required actions to effect such transfer of title to HRI when so requested. In addition to any requirements or limitations imposed upon the Contractor pursuant to paragraph 3 hereof, during the Term and for the 180 day period after expiration of the Term, the Contractor shall not transfer, convey, sublet, hire, lien, grant a security interest in, encumber or dispose of any such equipment. The provisions of this paragraph shall survive the termination of this Agreement.
- b) Contractor acknowledges and agrees that all work products, deliverables, designs, writings, inventions, discoveries, and related materials (collectively, “Works”) made, produced or delivered by Contractor in the performance of its obligations hereunder will be owned exclusively by HRI. All copyrightable Works are “works made for hire”, which are owned by HRI. Contractor will assign, and hereby assigns and transfers to HRI, all intellectual property rights in and to Works, including without limitation, copyrights, patent rights, trademark rights, and trade secret rights. The Contractor shall take all steps necessary to effect the transfer of the rights granted in this paragraph to HRI. As set forth in paragraph 18(d) herein, Standard Patent Rights Clauses under the Bayh-Dole Act (37 C.F.R. 401) are hereby incorporated by reference and shall supersede any terms in this Agreement that may conflict therewith. The provisions of this paragraph shall survive the termination of this Agreement.

**12. Confidentiality** - Information relating to individuals who may receive services pursuant to this Agreement shall be maintained and used only for the purposes intended under the Agreement and in conformity with applicable provisions of laws and regulations or specified in Attachment B, Program Specific Clauses. Contractor acknowledges and agrees that, during the course of performing services under this Agreement, it may receive information of a confidential nature, whether marked or unmarked, ("Confidential Information"). Contractor agrees to protect such Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature and importance, but with no less than reasonable care. Contractor will not use Confidential Information for any purpose other than to facilitate the provision of services under this Agreement, and Contractor will not disclose Confidential Information in an unauthorized manner to any third party without HRI's advance written consent.

**13. Equal Opportunity and Non-Discrimination** - Contractor acknowledges and agrees, whether or not required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) or any other State or Federal statutory or constitutional non-discrimination provisions, that Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, gender identity, national origin, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, Contractor agrees that neither it nor its authorized subcontractors, if any, shall, by reason of race, color, creed, disability, age, sex, sexual orientation, gender identity, 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 Agreement. Contractor is subject to fines of \$50.00 per person per day for any violation of this provision, or of Section 220-e or Section 239 of the New York State Labor Law, as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

**14. Use of Names** - Unless otherwise specifically provided for in Attachment B, Program Specific Clauses, and excepting the acknowledgment of sponsorship of this work as required in paragraph 10 hereof (Publications), the Contractor will not use the names of Health Research, Inc. the New York State Department of Health, the State of New York or any employees or officials of these entities without the express written approval of HRI.

**15. Site Visits and Reporting Requirements -**

- a) Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance of the services under this Agreement (collectively, "Records"). The Records must be kept for three years after the final voucher is paid.
- b) HRI and the Project Sponsor or their designee(s) shall have the right to conduct site visits where services are performed and observe the services being performed by the Contractor and any subcontractor and inspect Records. The Contractor shall render all assistance and cooperation to HRI and the Project Sponsor in connection with such visits. The surveyors shall have the authority, to the extent designated by HRI, for determining contract compliance as well as the quality of services being provided.
- c) The Contractor agrees to provide the HRI Project Director, or his or her designee complete reports, including but not limited to, narrative and statistical reports relating to the project's activities and progress at the Reporting Frequency specified in Exhibit C. The format of such reports will be determined by the HRI Project Director and conveyed in writing to the Contractor.

**16. Miscellaneous –**

- a) Contractor and any subcontractors are independent contractors, not partners, joint venturers, or agents of HRI, the New York State Department of Health or the Project Sponsor; nor are the Contractor's or subcontractor's employees considered employees of HRI, the New York State Department of Health or the Project Sponsor for any reason. Contractor shall pay employee compensation, fringe benefits, disability benefits, workers compensation and/or withholding and other applicable taxes (collectively the

"Employers Obligations") when due. The contractor shall include in all subcontracts a provisions requiring the subcontractor to pay its Employer Obligations when due. Contractor is fully responsible for the performance of any independent contractors or subcontractors.

- b) This Agreement may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, subjected to any security interest or encumbrance of any type, or disposed of without the previous consent, in writing, of HRI.
- c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- d) Contractor shall have no interest, financial or otherwise, direct or indirect, or engage in any business, transaction, or professional activity, that may create a conflict, or the appearance of a conflict, with the proper discharge of Contractor's duties under this Agreement or the conflict of interest policy of any agency providing federal funding under this Agreement. In the event any actual or potential conflict arises, Contractor agrees to notify HRI in writing within ten (10) days to allow HRI to evaluate any potential or actual conflict. Contractor certifies that it has implemented and is in compliance with a financial conflict of interest policy that complies with 42 CFR Part 50 Subpart F, as may be amended from time to time. Contractor acknowledges that it cannot engage in any work or receive funding from HRI until they have disclosed all financial conflicts of interest and identified an acceptable management strategy to HRI. At HRI's request, Contractor will provide information about how it identified, managed, reduced or eliminated conflicts of interest. Failure to disclose such conflicts or to provide information to HRI may be cause for termination as specified in the Terms & Conditions of this Agreement. HRI shall provide Contractor with a copy of notifications sent to the funding agency under this Agreement.
- e) Regardless of the place of physical execution or performance, this Agreement shall be construed according to the laws of the State of New York and shall be deemed to have been executed in the State of New York. Any action to enforce, arising out of or relating in any way to any of the provisions of this Agreement may only be brought and prosecuted in such court or courts located in the State of New York as provided by law; and the parties' consent to the jurisdiction of said court or courts located in the State of New York and to venue in and for the County of Albany to the exclusion of all other court(s) and to service of process by certified or registered mail, postage prepaid, return receipt requested, or by any other manner provided by law. The provisions of this paragraph shall survive the termination of this Agreement.
- f) All official notices to any party relating to material terms hereunder shall be in writing, signed by the party giving it, and shall be sufficiently given or served only if sent by registered mail, return receipt requested, addressed to the parties at their addresses indicated on the face page of this Agreement.
- g) If any provision of this Agreement or any provision of any document, attachment or Exhibit attached hereto or incorporated herein by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement but this Agreement shall be reformed and construed as if such invalid provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted.
- h) The failure of HRI to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right by HRI or excuse a similar subsequent failure to perform any such term or condition by Contractor.
- i) It is understood that the functions to be performed by the Contractor pursuant to this Agreement are non-sectarian in nature. The Contractor agrees that the functions shall be performed in a manner that does not discriminate on the basis of religious belief and that neither promotes nor discourages adherence to particular religious beliefs or to religion in general.

- j) In the performance of the work authorized pursuant to this Agreement, Contractor agrees to comply with all applicable project sponsor, federal, state and municipal laws, rules, ordinances, regulations, guidelines, and requirements governing or affecting the performance under this Agreement in addition to those specifically included in the Agreement and its incorporated Exhibits and Attachments.
- k) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of an executed signature page to the Agreement by facsimile transmission or PDF shall be as effective as delivery of a manually signed counterpart.

**17. Federal Regulations/Requirements Applicable to All HRI Agreements -**

The following are federal regulations, which apply to all Agreements; regardless of the source of the funding (federal/non-federal) specified on the face page of this Agreement. Accordingly, regardless of the funding source, the Contractor agrees to abide by the following:

- a) Human Subjects, Derived Materials or Data - If human subjects are used in the conduct of the work supported by this Agreement, the Contractor agrees to comply with the applicable federal laws, regulations, and policy statements issued by DHHS in effect at the time the work is conducted, including by not limited to Section 474(a) of the HHS Act, implemented by 45 CFR Part 46 as amended or updated. The Contractor further agrees to complete an OMB No. 0990-0263 form on an annual basis.
- b) Laboratory Animals - If vertebrate animals are used in the conduct of the work supported by this Agreement, the Contractor shall comply with the Laboratory Animal Welfare Act of 1966, as amended (7 USC 2131 et. seq.) and the regulations promulgated thereunder by the Secretary of Agriculture pertaining to the care, handling and treatment of vertebrate animals held or used in research supported by Federal funds. The Contractor will comply with the *HHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions* and the *U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training*.
- c) Research Involving Recombinant DNA Molecules - The Contractor and its respective principle investigators or research administrators must comply with the most recent *Public Health Service Guidelines for Research Involving Recombinant DNA Molecules* published at Federal Register 46266 or such later revision of those guidelines as may be published in the Federal Register as well as current *NIH Guidelines for Research Involving Recombinant DNA Molecules*.
- d) Contractor is required to register with SAM.gov and maintain active status as stated in 2 CFR Subtitle A, Chapter 1, and Part 25. Contractor must maintain the accuracy/currency of the information in SAM at all times during which the Contractor has an active agreement with HRI. Additionally, the Contractor is required to review and update the information at least annually after the initial registration, and more frequently if required by changes in information.
- e) Equal Employment Opportunity – for all agreements

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

#### **18. Federal Regulations/Requirements Applicable to Federally Funded Agreements through HRI -**

The following clauses are applicable only for Agreements that are specified as federally funded on the Agreement face page:

- a) If the Project Sponsor is an agency of the Department of Health and Human Services: The Contractor must be in compliance with the following Department of Health and Human Services and Public Health Service regulations implementing the statutes referenced below and assures that, where applicable, it has a valid assurance (HHS-690) concerning the following on file with the Office of Civil Rights, Office of the Secretary, HHS.
  - 1) Title VI of the Civil Rights Act of 1964 as implemented in 45 CFR Part 80.
  - 2) Section 504 of the Rehabilitation Act of 1973, as amended, as implemented by 45 CFR Part 84.
  - 3) The Age Discrimination Act of 1975 (P.L. 94-135) as amended, as implemented by 45 CFR 1.
  - 4) Title IX of the Education Amendments of 1972, in particular section 901 as implemented at 45 CFR Part 86 (elimination of sex discrimination).
  - 5) Sections 522 and 526 of the HHS Act as amended, implemented at 45 CFR Part 84 (non-discrimination for drug/alcohol abusers in admission or treatment).
  - 6) Section 543 of the HHS Act as amended as implemented at 42 CFR Part 2 (confidentiality of records of substance abuse patients).
  - 7) Trafficking in Persons – subject to the requirement of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104).
  - 8) HHS regulatory requirements on Responsibility of Applicants for Promoting Objectivity in Research and financial conflicts of interest set forth in 42 C.F.R Parts 50 and 94.
  - 9) Contractor agrees to comply with other requirements of the Project Sponsor, if applicable, set forth in the HHS Grants Policy Statement.
- b) Notice as Required Under Public Law 103-333: If the Project Sponsor is an agency of the Department of Health and Human Services, the Contractor is hereby notified of the following statement made by the Congress at Section 507(a) of Public Law 103-333 (The DHHS Appropriations Act, 1995, hereinafter the "Act"): It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.
- c) Contractor agrees that if the Project Sponsor is other than an agency of the DHHS, items 1, 2, 3 and 4 in subsection a) above shall be complied with as implemented by the Project Sponsor.
- d) Contractor agrees that the Standard Patent Rights Clauses under the Bayh-Dole Act (37 C.F.R 401) are hereby incorporated by reference and shall supersede any terms in this Agreement that may conflict therewith.
- e) Criminal Penalties for Acts Involving Federal Health Care Programs\_- Recipients and sub-recipients of Federal funds are subject to the strictures of 42 U.S.C. 1320A-7B(b)) and should be cognizant of the risk of criminal and administrative liability under this statute, including for making false statements and representations and illegal remunerations.
- f) Equipment and Products - To the greatest extent practicable, all equipment and products purchased with federal funds should be American-made.

- g) Acknowledgment of Federal Support – When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part by federal money, all awardees receiving Federal funds, including and not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.
- h) Recipients and sub-recipients of Federal funds are subject to the strictures of the Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a-7b (b) and should be cognizant of the risk of criminal and administrative liability under this statute, specifically under 42 U.S.C. 1320 7b(b) illegal remunerations which states, in part, that whoever knowingly and willfully: (A) Solicits or receives (or offers or pays) any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring (or to induce such person to refer) and individual to a person for the furnishing or arranging for the furnishing of any item or service, OR (B) in return for purchasing, leasing, ordering, or recommending purchasing, leasing, or ordering, or to purchase, lease, or order, any goods, facility, services, or item for which payment may be made in whole or in part under subchapter XIII of this chapter or a State health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years or both.
- i) Clean Air Act and the Federal Water Pollution Control Act Compliance - If this contract is in excess of \$150,000, Contractor agrees to comply and to require that all subcontractors have complied, where applicable, with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- j) Americans With Disabilities Act - This agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs or activities pursuant to this Agreement.
- k) Whistleblower Policy: Congress has enacted whistleblower protection statute 41 U.S.C. 4712, which applies to all employees working for contractors, grantees, subcontractors, and subgrantees on federal grants and contracts. This program requires all grantees, subgrantees and subcontractors to: inform their employees working on any federally funded award they are subject to the whistleblower rights and remedies of the program; inform their employee in writing of employee whistleblower protections under 41 U.S.C. 4712 in the predominant native language of the workforce; and Contractors and grantees will include such requirements in any agreement made with a subcontractor or subgrantee.

The statute (41 U.S.C. 4712) states that an “employee of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as a reprisal for “whistleblowing”. In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

Whistleblowing is defined as making a disclosure “that the employee reasonably believes is evidence of any of the following: gross mismanagement of a federal contract or grant; a gross waste of federal funds; an abuse of authority relating to a federal contract or grant; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant). To qualify under the statute, the

employee's disclosure must be made to: a Member of Congress or a representative of a Congressional committee; or an Inspector General; or the Government Accountability Office; or a Federal employee responsible for contract or grant oversight or management at the relevant agency; or an authorized official of the Department of Justice or other law enforcement agency; or a court or grand jury; a management official or other employee of the contractor, subcontractor, grantee or subgrantee who has the responsibility to investigate, discover or address misconduct.

#### **19. Required Federal Certifications –**

Acceptance of this Agreement by Contractor constitutes certification by the Contractor of all of the following:

- a) The Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- b) The Contractor is not delinquent on any Federal debt.
- c) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) – Contracts for \$100,000 or more must file the required certifications. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- d) The Contractor shall comply with the requirements of the Pro-Children Act of 1994 and shall not allow smoking within any portion of any indoor facility used for the provision of health, day care, early childhood development, education or library services to children under the age of eighteen (18) if the services are funded by a federal program, as this Agreement is, or if the services are provided in indoor facilities that are constructed, operated or maintained with such federal funds.
- e) The Contractor has established administrative policies regarding Scientific Misconduct as required by the Final Rule 42 CFR Part 93, Subpart A as published at the 54 Federal Register 32446, August 8, 1989.
- f) The Contractor maintains a drug free workplace in compliance with the Drug Free Workplace Act of 1988 as implemented in 45 CFR Part 76.
- g) If the Project Sponsor is either an agency of the Public Health Service or the National Science Foundation, the Contractor is in compliance with the rules governing Objectivity in Research as published in 60 Federal Register July 11, 1995.
- h) Compliance with EO13513, Federal Leadership on Reducing Text Messaging while Driving, October 1, 2009. Recipients and sub recipients of CDC grant funds are prohibited both from texting while driving a Government owned vehicle and/or using Government furnished electronic equipment while driving any vehicle. Grant recipients and sub recipients are responsible for ensuring their employees are aware of this prohibition and adhere to this prohibition.
- i) EO 13166, August 11, 2000, requires recipients receiving Federal financial assistance to take steps to ensure that people with limited English proficiency can meaningfully access health and social services. A program of language assistance should provide for effective communication between the service

provider and the person with limited English proficiency to facilitate participation in, and meaningful access to, services. The obligations of recipients are explained on the OCR website at <http://www.hhs.gov/ocr/lep/revisedlep.html>.

- j) Equal Employment Opportunity, requires compliance with E.O. 13672 "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, "Equal Employment Opportunity", and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The Contractor shall require that the language of all of the above certifications will be included in the award documents for all subawards under this Agreement (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. The Contractor agrees to notify HRI immediately if there is a change in its status relating to any of the above certification