

New York State Department of Health

Office of Primary Care Health Systems Management Center for Health Care Quality and Surveillance

Request for Proposals

RFP No. 15365

Surveillance and Investigation Activities
For:

Adult Care Facilities, Licensed Home Care Services Agencies,
Nursing Homes and Intermediate Care Facilities

Schedule of Key Events

RFP Release Date	February 11, 2014
Letter of Interest (Optional)	February 24, 2014
Written Questions Due	4:00pm ET, March 3, 2014
Responses to Written Questions Posted	On or About March 14, 2014
Proposal Due Date and Time	4:00pm ET, April 14, 2014

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

- Submission of Letters of Intent
- Submissions of Written Questions
- Submission of Written Proposals
- Debriefings
- Negotiation of Contract Terms After Award

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I. Introduction

This Request for Proposals (RFP) is issued by the New York State Department of Health (“NYSDOH” or “Department”). The Department is responsible for the requirements specified herein and for the evaluation of all proposals. The RFP is to secure a contract with one or more qualified vendors to assist the Department’s Office of Primary Care Health Systems Management (OPCHSM), Center for Health Care Quality and Surveillance (CHCQS), with surveillance and investigation activities related to Adult Care Facilities, Licensed Home Care Services Agencies, Nursing Homes and Intermediate Care Facilities. There are four (4) Components in the RFP. Eligible vendors may bid on one or more of the components, however, vendors must bid on EVERY Unit within the component(s). Contracts awarded under this RFP will be for a three-year term (with one optional two-year renewal), with an anticipated start date of July 1, 2014. Work will be performed in the Department’s Central Office in Albany or in one or more of the following NYSDOH Regional Offices:

- Central New York Regional Office
- Metropolitan Area Regional Offices in:
 - New Rochelle
 - New York City
 - Long Island

The Department’s overall quality assurance goals and objectives are detailed in Section III of the RFP, starting on page 7. In summary, the Department, with contractor assistance, is committed to assuring the health, safety and dignity of individuals receiving services from these providers by conducting high quality, effective and efficient surveillance and complaint investigations to ensure that health care providers comply with State and Federal law and Department regulations. The selected contractor(s) will play a significant role in assisting the Department in achieving these goals.

II. Background

The Department, under contract with the Centers for Medicare and Medicaid Services (CMS), is responsible for the oversight of compliance with State and Federal Medicare and Medicaid health and safety standards for continuing care providers. State and Federal law and State regulations impose a variety of standards on how and the frequency in which the State assures quality care and outcomes for residents and patients of a variety of health care providers. The facility/provider types included in this RFP for which contractors will be responsible for surveillance and monitoring activities are divided into four (4) Components as follows:

- Component A: Adult Care Facilities (ACF), including:
 - Assisted Living Programs
 - Assisted Living Residences
- Component B: Licensed Home Care Services Agencies (LHCSA)
- Component C: Nursing Homes (NH)
- Component D: Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

Each survey, mandated by CMS or by State regulation, involves one or more of the following duties:

Identifying Potential Surveys: Identifying those facilities that require a Federal or State survey and the required schedule for each.

Certification/Recertification and Licensure/Relicensure: Determining whether entities meet Federal and/or State standards for participation in the programs, whether new or continuing, and certifying and recertifying such programs to the appropriate Federal or State agencies.

Conducting Investigations and Fact-Finding Surveys: Verifying to what degree the health care entities and residential facilities comply with the Federal and/or State requirements. Tasks involved include onsite and off-site surveys/investigations, issuance of Statements of Deficiencies (SOD) and providing assistance with review and approval of Plans of Corrections (POC). This function includes data entry of survey and investigative information into federal and/or Department data systems.

Explaining Requirements: Advising existing and potential providers and suppliers about applicable Federal and State requirements to enable them to qualify for participation in the programs and to maintain standards of health care and residential services consistent with State and Federal regulations and other requirements.

Facility Type Descriptions:

Component A: Adult Care Facilities

Adult care facilities (ACF) provide long-term, non-medical (with the exception of an additional certification of an Enhanced Assisted Living Residence which may elect to provide some level of nursing services), residential care and services to adults who are unable to live independently. Three types of ACFs, operated for the purpose of providing long-term residential care to five or more adults including room, board, housekeeping and personal care, are regulated by the Department:

- Adult Homes (AH): Provide three congregate meals per day and supervision
- Enriched Housing Programs (EHP): More closely resemble independent housing units, including kitchenettes
- Residences for Adults (RA): Generally facilities serving a population of primarily younger adults in need of an array of services including mental health services

The following additional programs can be operated in adult homes or enriched housing programs:

- Assisted Living Program

The Assisted Living Program (ALP) was established to serve individuals who are medically eligible for nursing home placement, but who are not in need of the highly structured, medical environment of a nursing facility, and whose needs could be met in a less restrictive and lower cost residential setting.

ALPs are responsible for providing residents with long-term residential care, room, board, housekeeping, personal care, supervision, and providing/arranging for home health services. ALPs are required to hold dual licenses/certification as: 1) an adult home or enriched housing program, and 2) as a licensed home care services agency (LHCSA), long term home health care program (LTHHCP) or certified home health care agency (CHHA). If the ALP is licensed as a LHCSA, it must contract with a CHHA for the provision of skilled services (nursing, therapies) to ALP residents.

- Assisted Living Residences

Assisted living residences (ALR) are entities which provide or arrange for housing, twenty-four hour on-site monitoring and personal care services, and/or home care services (either directly or indirectly) in a home-like setting to five or more adult residents. ALRs must also provide daily food service, case management services and the development of an individualized service plan. In order to operate as an ALR, an operator must also be certified as an ACF (i.e.,

adult home or enriched housing program). Additional certifications are available to ALRs:

- Enhanced Assisted Living Residence (EALR): Authorized to provide for “aging in place”; and
- Special Needs Assisted Living Residence (SNALR): Allows an operator to advertise/market as serving individuals with special needs (e.g., dementia, cognitive impairments).

Component B: Licensed Home Care Services Agencies

A Licensed Home Care Services Agency (LHCSA) provides home care services including nursing, home health aide or personal care services, and may provide other home care services such as physical therapy, occupational therapy, speech/language pathology, nutrition, social work, respiratory therapy, medical supplies, equipment and appliances.

LHCSAs offer home care services to clients who pay privately or have private insurance coverage. These agencies may also contract to provide services to Medicare/Medicaid beneficiaries whose cases are managed by another provider or entity.

LHCSAs may contract with managed care plans, managed long term care plans, hospices and certified home health agencies.

LHCSAs may also be approved to operate Home Health Aide or Personal Care Aide Training Programs, providing instruction and NYS certification in these titles.

Component C: Nursing Homes

Nursing homes provide twenty-four hour nursing care and supervision outside of a hospital. All nursing homes must provide certain basic services and some homes provide special care for certain types of clients.

Although most nursing home residents are age 65 and over, these facilities are increasingly being used to care for younger individuals who require a nursing home level of care that may not be available elsewhere. Nursing homes now care for individuals with aggressive or threatening behaviors, HIV/AIDS, substance abuse problems, conditions that require the use of a ventilator, traumatic brain injuries (TBI) and other conditions.

In addition, most nursing homes now provide some level of short-term rehabilitation services for individuals who have recently had surgery in a hospital or have experienced a health episode that requires rehabilitation within a 21-day timeframe. Some facilities have implemented specialized programs and units to address specific populations. Also, several facilities in NYS now provide services to pediatric individuals (age 21 and under). Currently, seven (7) pediatric specialty facilities exist in New York.

Component D: Intermediate Care Facilities for Individuals with Intellectual Disabilities

An Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) is an institution (or distinct part thereof) serving a minimum of four persons diagnosed with Intellectual Disabilities (formerly referred to as Mental Retardation). The primary function of an ICF/IID is to provide health, habilitative, and rehabilitative services to the residents. These services are provided using a developmental model of service provisions. An ICF/IID provides a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health habilitative, and rehabilitative services to help each individual function at his greatest ability.

III. Program Specifications/Deliverables

Vendors may bid on one or more Components included in the RFP, but MUST bid to provide the services described in ALL units within a Component. Proposals that do not include a narrative and bid prices for all units within a component will be deemed non-responsive for that Component. More than one contract may be awarded as a result of this RFP, but only one contract will be awarded for each component.

Contractors awarded under this RFP will be responsible for providing staffing in adequate numbers and with appropriate expertise to fulfill the duties for surveillance and quality assurance as outlined in the Components and Units included in this Section.

In addition to the responsibilities defined below, the contractor will be responsible for ensuring all contractor staff performing surveillance activities undergo all training required by the Department and/or CMS.

Each unit description provides an estimate of the number of surveys and/or complaint investigations that the Department is seeking contractor assistance in conducting annually, and the number of hours to complete a survey/investigation. **These workload projections are based upon information available at the time of the RFP issuance, to be used by bidders in developing their proposals, and are in no way a guarantee of work to be performed under the contract.**

A. ADMINISTRATIVE SPECIFICATIONS

In addition to providing the specific staff resources to conduct surveys and investigations in the components/units as outlined below, contractors will be required, for each component, to perform overall administrative functions for the contract. **NOTE: All administrative activities listed below, including all travel arrangements and reimbursement, are to be included in the per unit pricing. No additional administrative or travel fees will be paid to the contractor. Failure to adequately perform these functions may result in performance standard penalties, further described in Section V.E. Payment and Reporting.**

Staff oversight: Although contractor staff will be located in the Department's Central and/or Regional Offices, contractors are responsible for the oversight of staff including payment of salary and fringe benefits (if applicable), coordination of time off, disciplinary actions and other overhead functions. The contractor's project manager will coordinate with Department staff on all staffing logistics issues, e.g., time off, disciplinary issues. Specific work assignments will be assigned by Department staff.

Staff replacement: If necessary, the contractor is required to replace staff due to attrition or dismissal. The contractor will be required to post job openings, conduct interviews and submit resumes of chosen candidates to the Department for prior approval; where feasible, to be completed within 30 days of the current staff person leaving the position. Extenuating circumstances, such as sudden death of a current staff person, several current staff members leaving at the same time, or chosen candidates declining the job offer, may be considered by the Department for extension of the 30 day timeframe.

Training: The contractor will be required to ensure that all staff hired for the contract are properly trained and/or receive the required training in the component(s) awarded. Much of the training is web-based, self-paced training that individuals complete on their own time at their workstation, as well as on-the-job training and oversight done by Department surveyors. However, additional training, which may require travel, may be required. Training requirements are detailed below for each component.

Staff may have completed required trainings, or the equivalent, prior to the commencement of the contract. It is the contractor's responsibility to ensure this information is presented to the Department prior to the start of work.

Travel: The contractor is required to coordinate and pay for all travel arrangements including transportation, hotels and meals. This pertains to day-to-day survey functions as well as any training required.

For required classroom-based trainings, the contractor's project manager will be responsible for the coordination of training attendance, in conjunction with Department staff. These trainings may occur in various locations, e.g., Baltimore, MD.

All costs related to travel must be built into the unit pricing. No additional reimbursement will be given for travel costs.

Reporting: The contractor is required to prepare and submit monthly reports on contract deliverables, in a format to be determined by the Department. The reports will outline any units begun, in progress and/or completed during the month. For any completed units within the component(s), a standard voucher will be submitted for payment of the units.

B. UNIT DESCRIPTIONS/SPECIFICATIONS

COMPONENT A: ADULT CARE FACILITIES

The Office of Primary Care Health Systems Management's Division of Assisted Living (DAL) is responsible for the operation and quality assurance of adult care facilities in New York State through on-site surveys and complaint investigations. The numbers of facilities are as follows:

- Adult Care Facilities (ACF) including Adult Homes (AH), Enriched Housing Programs (EHP) and Residences for Adults (RA): 522 operating, governed by regulations at 18 NYCRR Subpart D, Parts 485-490, as defined in Social Services Law (SSL) Article 7, Section 2 and the following programs which may be part of an AH or EHP:
 - Assisted Living Programs (ALP): 108 programs providing 6,679 beds, governed by SSL Section 461-I, the provisions of Public Health Law (PHL) Article 36 and 10 NYCRR Part 494.
 - Assisted Living Residences: 86 certified ALRs (and approximately 156 pending ALR applications) governed by Article 46-B of the PHL and regulations at 10 NYCRR Part 1001.

Component A consists of eight (8) units in which the contractor will be responsible for providing staffing assistance and administration. The survey responsibilities for all units are governed by the following Statutes and/or Regulations:

- SSL Article 7 and Article 7, Title 2:
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>
- NYCRR Title 18, SubChapter D, Parts 485-494:
http://www.health.ny.gov/regulations/nycrr/title_18/
- PHL Article 46-B:
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>
- NYCRR Title 10, Part 1001: http://www.health.ny.gov/regulations/nycrr/title_10/

For each unit in Component A, contractors will be required to provide the following type(s) of staff with the minimum qualifications listed below.

- Registered Professional Nurse (RN): Currently licensed and registered in NYS with one year of survey experience; and/or
- Surveyor/Social Worker: MSW degree OR Masters' degree in Guidance with 1 year of social work experience OR BSW plus 30 graduate credits; or Bachelor's degree in guidance with 2 years of social work experience.

Unless otherwise stated, where two contractor staff are required, the contractor may use a Surveyor/Social Worker as one of the surveyors, and where only one contractor surveyor is needed, it must be an RN.

Surveys to be conducted under this component may be located in the five boroughs of New York City and the counties of Sullivan, Orange, Dutchess, Putnam, Rockland, Westchester, Suffolk and Nassau.

Contractor staff will be located in the Department's Metropolitan Area Regional Offices (MARO). The Department will provide, at no cost to the contractor, office space, furniture and supplies; communications equipment including telephones, fax machines, personal computers and printers; and computer support services.

Training

Training for contractor staff is conducted on-site at the Regional Office by the Department. The required training takes approximately eight weeks to complete (including computer training and on-site supervised surveys), but may take more or less time, depending on the experience of the contractor staff. Contractor staff will not begin surveillance activities until training is complete.

General surveillance training for contractor staff will include, but not be limited to:

- Principles of Documentation – Web-based training to be completed at the work station
- NYS Codes, Rules and Regulations as they relate to Adult Homes, Enriched Housing, Assisted Living Programs (ALP), Assisted Living Residences (ALR), Enhanced ALR's (EALR) and Special Needs ALR's

In addition, Contractor staff will be responsible for entering data into ASPEN and other data recording systems specified by the Department. ASPEN (Automated Survey Process ENvironment) is a suite of software applications that the Centers for Medicare and Medicaid Systems (CMS) requires all states, including New York, to use to record and manage surveillance information collected during complaint investigations and periodic surveys of health care providers certified to receive Medicare and Medicaid reimbursement.

All data entry will be performed in accordance with the instructions and within the timeframes contained in the most current ASPEN manuals (current as of the time of data entry). Contractor staff are required to learn and use these procedures for all surveillance activities under the contract. As of the date of the release of this RFP, the following procedures are in effect (ASPEN Manuals Version 10.1.5):

- ASPEN Central Office (ACO) Procedures Guide
- ASPEN Survey Explorer – Quality (ASE-Q)
- Justice Center VPRS training at work station

Contractor staff may be required to attend, via conference call, monthly quality assurance committee meetings with the DAL's Central Office. These meetings may include: review of QI indicators; focus reviews; hot topics; revisions to policies and procedures; and development or revision of guidelines.

For information on survey procedures, bidders should review the survey checklists which are included as PDF files on the RFP index page on the Department website at www.health.ny.gov/funding. Contractors will also be utilizing the Adult Care Facility Quality and Surveillance Operations Manual – Inspection Process when conducting the surveys.

Unit A1: Pre-Opening Inspection

Prior to opening and receiving residents, each facility must pass a pre-opening survey inspection. The pre-opening inspection mirrors a complete inspection (see Unit A2) with the exception of resident interviews. This inspection determines the facility's compliance with regulatory requirements for the provision of medical, dietary and other resident care services, records, physical environment, equipment and personnel. The inspection includes a complete review of facility operations utilizing the expertise of three disciplines: program, fire/safety and nutrition. Inspectors conduct extensive reviews of all regulations pertaining to the specific type of facility in each operational area to ascertain the level of operator compliance with Department standards.

Pre-opening surveys are completed by one surveyor. While these are primarily conducted using Department staff, a contractor RN or Surveyor/Social Worker may be required to complete a pre-opening survey.

There are approximately 25 pre-opening surveys conducted per year, averaging 24 hours per surveyor per survey.

In the event a contractor staff is required to complete a pre-opening survey, for the contractor to receive payment for a survey, the first of the following events occurs:

1. The facility is found to be in substantial compliance at the time of the survey; OR
2. A Statement of Deficiencies (SOD) not requiring a Plan of Correction (POC) is issued to the facility; OR
3. An SOD requiring a POC is issued and an acceptable POC is received by the Department and a follow-up inspection is scheduled; OR
4. Thirty days have passed since an SOD requiring a POC was issued and the facility has either not responded or failed to provide an acceptable POC, and a follow-up inspection is scheduled;

AND all required data entry is completed.

Statements of deficiencies and approvals of plans of correction may be sent to the facility from the contractor staff on behalf of the Department. If a follow-up is required, it will be billed as a separate unit (see Unit A4).

Unit A2: Complete Inspection

Complete inspections include all types of ACF's, including ALP, EALR and SNALR. The inspection of the ALP's may be performed in conjunction with LHCSA surveillance staff. The scope of the complete inspection generally includes a comprehensive review of:

- resident rights,
- resident financial accounts,
- dietary, medication and case management activities,
- maintenance and
- compliance with sanitary and safety codes

The survey team consists of 4 surveyors per inspection. Either two RN's or one RN and one Surveyor/Social Worker will be provided by the contractor. A nutritionist and a sanitarian will be Department staff.

There are approximately 247 complete inspections conducted per year, averaging 30 hours per surveyor per survey.

For the contractor to receive payment for a survey, the first of the following events occurs:

1. The facility is found to be in substantial compliance at the time of the survey; OR
2. A Statement of Deficiencies (SOD) not requiring a Plan of Correction (POC) is issued to the facility; OR
3. An SOD requiring a POC is issued and an acceptable POC is received by the Department and a follow-up inspection is scheduled; OR
4. Thirty days have passed since an SOD requiring a POC was issued and the facility has either not responded or failed to provide an acceptable POC, and a follow-up inspection is scheduled;

AND all required data entry is completed.

Depending on the nature of the violations, a follow-up inspection may be required (see Unit A4).

Statements of deficiencies and approvals of plans of correction may be sent to the facility from the contractor staff on behalf of the Department. If a follow-up is required, it will be billed as a separate unit (see Unit A4).

Unit A3: Partial Inspection

A partial inspection is any inspection that is not a complete inspection of the facility as described in Unit A2. Partial inspections include, but are not limited to, a review of facility operations in a specific, pre-selected area, e.g., medication activities, and usually occur when the Department receives incident reports that require on-site inspections. An incident report is submitted by the facility (Incident Report Form DSS3123) to notify the Department of an event that occurred that is either a reportable incident as defined by ACF Regulations 487.7(d)(1-13), 488.7(b)(1-13) and 490.7(d)(1-11), or a significant event of which the facility determines the Department should be informed. Depending on the need, other inspection components may be added at the discretion of the regional office.

Contractor staff will only be required on a partial inspection if the area selected for review requires the presence of an RN and/or Surveyor/Social Worker. Where only a nutritionist and/or sanitarian are required, the inspection is conducted by Department staff.

There are approximately 73 partial inspections conducted per year, averaging 48 hours per surveyor per survey.

For the contractor to receive payment for a survey, the first of the following events occurs:

1. The facility is found to be in substantial compliance at the time of the survey; OR
2. A Statement of Deficiencies (SOD) not requiring a Plan of Correction (POC) is issued to the facility; OR
3. An SOD requiring a POC is issued and an acceptable POC is received by the Department and a follow-up inspection is scheduled; OR
4. Thirty days have passed since an SOD requiring a POC was issued and the facility has either not responded or failed to provide an acceptable POC, and a follow-up inspection is scheduled;

AND all required data entry is completed.

If a follow-up is required, it will be billed as a separate unit (see Unit A4).

Unit A4: Follow-Up Inspection

Any time a POC is required related to a pre-opening, complete or partial inspection (units A1 – A3), a follow-up inspection will be scheduled which contractor staff may be required to perform, depending on the nature of the violation (e.g., medication or care violations would require Contractor RN presence; environmental violations would only require a Department sanitarian).

There are approximately 150 follow-up inspections conducted per year, averaging 25 hours per survey.

For the contractor to receive payment for a follow-up inspection, the first of the following events occurs:

1. The facility is found to be in substantial compliance at the time of the follow-up inspection; OR
2. A Statement of Deficiencies (SOD) not requiring a Plan of Correction (POC) is issued to the facility; OR
3. An SOD requiring a POC is issued and an acceptable POC is received by the Department and another follow-up inspection is scheduled; OR
4. Thirty days have passed since an SOD requiring a POC was issued and the facility has either not responded or failed to provide an acceptable POC, and another follow-up inspection is scheduled;

AND all required data entry is completed.

Unit A5: Complaint Investigation

Written or verbal complaints made to the Department initiate an investigation of the facility to determine the validity of the complaint. Whenever possible, complaint investigations are integrated into normal inspection schedules, unless the nature of the complaint warrants a more prompt investigation.

When an independent complaint investigation occurs, depending on the nature of the complaint, contractor staff may be required to attend.

One contractor RN or Surveyor/Social Worker is required for this unit.

There are approximately 280 separate complaint investigations per year, averaging 25 hours per investigation.

The unit is considered complete and the contractor may receive payment when:

1. The complaint is closed on the ASPEN Complaint Tracking System (ACTS); and
2. All required data entry completed.

Unit A6: Questionable Operations Investigation

When the Department receives complaints or referrals alleging that an entity is operating an adult care facility without being licensed by NYSDOH, an investigation determines whether the entity is providing services consistent with an adult care facility that requires licensure and what, if any, other action needs to be taken. Contractor staff may be required to assist in performing

the investigation to determine action to be taken, depending on the services being provided by the entity.

In addition to conducting investigations, contractor staff may be required to maintain, update and/or review the log of facilities determined to be operating without a license on a quarterly basis, as assigned by the Regional Office.

There are approximately 10 investigations annually, averaging 22.5 hours per surveyor, which 2 contractor staff are required to perform.

The unit is considered complete and the contractor may receive payment when:

1. All investigations and reports required by the Department related to a Q-Ops investigation are completed.

Unit A7: Death Investigation

For all residents residing in an ACF, ALR, EALR, SNALR and ALP, the Department investigates all suicides, suspected suicides and attempted suicides as well as any unusual circumstances prior to death; or whenever, based on information received, the Regional Office determines further investigation of any of the circumstances surrounding the death or attempted suicide is warranted.

The unit is considered complete and payment may be made to the contractor when:

1. All reports and inspections required by the Department for a death investigation are completed.

There are approximately 230 off-site death investigations annually, averaging 3.5 hours per investigation, and 20 on-site investigations, averaging 22.5 hours per investigation for which contractor assistance is required. Both on-site and off-site investigations would require which 1 contractor staff to perform.

Unit A8: Facility Closure and Emergency Evacuation Monitoring

Monitoring is required when the Department:

1. receives a plan of closure from a facility; or
2. learns that a facility is going to close without a plan; or
3. instructs a facility under Questionable Operations ("Q-Ops", see unit A6) to close; or
4. is alerted that patients in a facility must be evacuated and repatriated in an emergency;

and involves monitoring the closure and/or placement of residents to assure resident safety and continuity of care.

There are approximately 3 regular ACF and 2 Q-Ops closures annually, averaging 81 hours per regular closure and 40 hours for Q-Ops closures, for which 1 contractor staff is required. Additionally, 22 emergency evacuations occurred in 2012.

The unit is complete and payment may be made to the contractor when:

1. All reports and inspections required by the Department for a monitoring instance are completed.

COMPONENT A**ADULT CARE FACILITIES****Units A1 through A8**

UNIT NUMBER	UNIT NAME	ESTIMATED STAFF NEEDED PER UNIT	APPROXIMATE UNITS TO BE CONDUCTED ANNUALLY	AVERAGE HOURS PER SURVEYOR*
A1	Pre-Opening Inspection	1 RN or Surveyor/Social Worker	25	24
A2	Complete Inspection	2 (1 RN plus 1 RN or Surveyor/Social Worker)	247	30
A3	Partial Inspection	2 (1 RN plus 1 RN or Surveyor/Social Worker)	73	48
A4	Follow Up Inspection	1 RN or Surveyor/Social Worker	150	25
A5	Complaint Investigation	1 RN or Surveyor/Social Worker	280	25
A6	Questionable Operations Investigation (Q-Ops)	2 (1 RN plus 1 RN or Surveyor/Social Worker)	10	22.5
A7	Death Investigation	1 RN or Surveyor/Social Worker	250 230 – Off Site 20 – On Site	3.5 22.5
A8	Facility Closure & Emergency Evacuation Monitoring	1 RN or Surveyor/Social Worker	3 ACF Closures 2 Q-Ops Closures 22 Emergency Evacuations (2012) *does not include repatriation	81 40 10*

NOTE: Workload projections are based upon information available at the time of the RFP issuance, to be used by bidders in developing their proposals, and are in no way a guarantee of work to be performed under the contract.

* Includes all Part II, prep, onsite and travel time, and preparation of Statement of Deficiencies or other reporting as required.

COMPONENT B: LICENSED HOME CARE SERVICES AGENCIES

The Office of Primary Care Health Systems Management's Division of Home and Community Based Services is responsible for the licensure and surveillance and quality monitoring of licensed home care services agencies (LHCSA) in New York State through on-site surveys and complaint investigations. There are approximately 1,200 LHCSA's licensed in NYS, governed by PHL Article 36 §3605 and NYCRR Title 10 Parts 700, 765 (specifically Subpart 765-2) and 766.

The Department oversees the initial licensure of LHCSA's, including a review of the agency's policies and procedures and conducting a pre-opening survey, as well as other surveillance activities related to re-licensure, evaluation of the agency's compliance with State regulations and complaint investigation.

Component B consists of three (3) units in which the contractor will be responsible for providing staffing assistance, training and administration. The survey responsibilities for all units are governed by 10 NYCRR Subparts 700, 765 and 766 (http://www.health.ny.gov/regulations/nycrr/title_10/).

For each unit in Component B, contractors will be required to provide the following type of staff with the minimum qualifications listed below.

- Registered Professional Nurse (RN): Currently licensed and registered in NYS with a Bachelor's degree in nursing and two years of clinical or administrative experience; and
- Surveyor/MSW (MSW): Master of Social Work degree.

Unless otherwise stated, when two contractor surveyors are required, the contractor may use an MSW as one of the surveyors. When only one contractor surveyor is needed, it must be an RN.

Surveys to be conducted under this component may be located in the five boroughs of New York City and the counties of Sullivan, Orange, Dutchess, Ulster, Putnam, Rockland, Westchester, Suffolk and/or Nassau.

Contractor staff will be located at the Department's Metropolitan Area Regional Offices (MARO) in New Rochelle, New York City and/or Central Islip. The Department will provide, at no cost to the contractor, office space, furniture and supplies; communications equipment including telephones, fax machines, personal computers and printers; and computer support services.

Training

For Component B, the required training includes, at a minimum:

- LHCSA Surveillance Process
- Home Health Aide Training Program Surveillance Process
- Principles of Documentation – independent web-based training to be completed at work station

Contractor staff will be responsible for entering data into ASPEN and other data recording systems specified by the Department. All data entry will be performed in accordance with the instructions and within the timeframes contained in the most current ASPEN manuals (current as of the time of data entry). Contractor staff are required to learn and use these procedures for all LHCSA surveillance activities under the contract. As of the date of the release of this RFP, the following

procedures are in effect (ASPEN Manuals Version 10.1.5). Training will be on-site or on-line as follows:

- ASPEN Central Office (ACO) Procedures Guide
- ASPEN Survey Explorer – Quality (ASE-Q)
- Department program-specific procedures

For information on survey procedures, bidders should review the following documents, provided on the RFP face page at www.health.ny.gov/funding:

- LHCSA Article 36 Surveillance Process; and
- HHATP Surveillance Process

UNIT B1: LHCSA Policies and Procedures Manual Review

Prior to being recommended for licensure, each LHCSA applicant must submit its policies and procedures manual for review and compliance with Article 36 and 10 NYCRR. One contractor staff will be responsible for the review of manuals, and interfacing with Department staff to approve and/or follow-up with the agency to resolve any deficiencies. Three follow-ups are allowed prior to the agency being found non-responsive and the Department closes the application.

One contractor RN or MSW will be required to conduct the review and all follow-up for each manual.

There are approximately 80 manual reviews conducted per year for which contractor assistance is required, averaging 80-120 hours per review (includes all follow-up).

The review is considered complete, and payment will be made to the contractor when the first of the following occurs:

1. Manual is reviewed within 10 days of receipt and approved; OR
2. A first follow-up letter is drafted for Department review within 5 days of review completion and results in submission of additional information and manual is approved; OR
3. Second follow-up letter is drafted for Department review within 5 days of review completion, resulting in submission of additional information and manual is approved; OR
4. Third follow-up letter is drafted for Department review within 5 days of review completion, resulting in submission of additional information and manual is approved; OR
5. Applicant has been non-responsive to inquiries (including submission of inadequate additional information) and the Department agrees that closure of the application is appropriate;

AND all required data entry is completed.

NOTE: If it is determined by the Department that closure of an application will not occur (per step #5 above), NYSDOH staff will take over the manual review process after the third unsuccessful attempt at receiving adequate information.

UNIT B2: LHCSA Pre-Opening Survey

Subsequent to the approval of the Policies and Procedures manual, a pre-opening survey is performed. The Department conducts an initial state licensure pre-opening survey prior to agency opening to assure appropriate operations are in place to serve patients. The pre-opening survey is conducted prior to issuance of a license and includes review of requested pre-survey materials and an on-site survey. The on-site survey activities include:

- Interviews with administrative personnel;
- Resolution of issues related to pre-survey materials;
- Observation of office space; and
- Review of personnel records.

Two contractor staff will be required to participate in the pre-opening surveys, either two RN's or one RN and one MSW.

There are approximately 80 pre-opening surveys per year requiring contractor assistance, averaging 25-37.5 hours per survey.

The unit is considered complete and payment will be made to the contractor when: (NOTE: If a revisit survey is required, as determined by the Department, it is conducted by NYSDOH staff and the unit is complete when the revisit survey is scheduled. If a POC is not received by the agency for review in a timely manner, State staff will conduct further follow up.)

1. The survey is completed;
2. A Statement of Deficiencies (SOD) is prepared for issue within 10 days of the survey exit date;
3. A POC (if applicable) is reviewed and accepted by the Department; and
4. All data entry is completed.

UNIT B3: LHCSA Re-Licensure Survey

Re-Licensure surveys are site visits that include: interviews; observations of home visits; and record reviews to assure that personnel, equipment, rules, standards of care, patient rights and grievance procedures, quality improvement processes and home care services meet statutory and regulatory standards. If the agency is also an operator of training program(s), the program will be surveyed at the same time.

Two contractor staff will be required to participate in the pre-opening surveys, either two RN's or one RN and one MSW. Contractor staff may be part of a larger team including Department staff.

There are approximately 200 surveys per year requiring contractor assistance, averaging 30-37.5 hours per survey.

The unit is considered complete and payment will be made to the contractor when: (NOTE: If a revisit survey is required, as determined by the Department, it is conducted by NYSDOH staff and the unit is complete when the revisit survey is scheduled. If a POC is not received by the agency for review in a timely manner, NYSDOH staff will conduct further follow up.)

1. The survey is completed;
2. A Statement of Deficiencies (SOD) is prepared for issue within 10 days of the survey exit date;
3. A POC (if applicable) is reviewed and accepted by the Department; and
4. All data entry is completed.

COMPONENT B

LICENSED HOME CARE SERVICES AGENCIES (LHCSA)

Units B1 through B3

UNIT NUMBER	UNIT NAME	ESTIMATED STAFF NEEDED PER UNIT	APPROXIMATE UNITS TO BE CONDUCTED ANNUALLY	AVE. HOURS PER SURVEYOR*
B1	LHCSA Policies & Procedures Manual Review	1 (RN or MSW)	80	80-120
B2	LHCSA Pre-Opening Survey	2 (1 RN plus 1 RN or MSW)	80	25-37.5
B3	LHCSA Re-Licensure Survey	2 (1 RN plus 1 RN or MSW)	200	30-37.5

NOTE: Workload projections are based upon information available at the time of the RFP issuance, to be used by bidders in developing their proposals, and are in no way a guarantee of work to be performed under the contract.

* Includes all prep, onsite, and travel time, and preparation of the Statement of Deficiencies or other reporting as required.

COMPONENT C: NURSING HOMES

Pursuant to Title XVIII and Title XIX of the Federal Social Security Act and Article 28 of the NYS Public Health Law, the Department's Division of Nursing Home and ICF/IID Surveillance is responsible for administering and managing the nursing home surveillance and certification program, which includes nursing home complaint investigation. These activities are mandated to evaluate facility performance and monitor the quality of care and services provided to the approximately 117,000 residents living in the 634 nursing homes statewide.

Component C consists of four (4) units for which the contractor will be responsible for providing staffing assistance, training and administration. The survey responsibilities for all units are governed by:

- Public Health Law Article 28 (<http://public.leginfo.state.ny.us/menugtf.cgi>) and
- 10 NYCRR Part 415 (http://www.health.ny.gov/regulations/nycrr/title_10/).

For Unit C1, the contractor will be required to provide two (2) to four (4) Registered Professional Nurses (RNs) depending on the facility size (2 RNs for facilities with less than 300 beds and 4 RNs for facilities with 300 beds or more).

For Unit C2 the contractor will be required to provide one (1) or two (2) RNs.

For Units C3 and C4 the contractor will be required to provide one (1) RN.

All RNs will have the following minimum qualifications:

- Currently licensed and registered in NYS; AND
- Two (2) years' experience performing utilization review, claims adjudication, medical review, fraud investigation, surveillance or monitoring activities; OR
- Three (3) years of clinical or administrative experience in a medical facility or Bachelor's degree in nursing and two years' such experience.

In addition, **for Component C only**, staff must currently possess Surveyor Minimum Qualifications Test (SMQT) certification, or obtain such certification within 12 months of employment by the contractor. Fifty percent (50%) or more of a bidder's staff for this component should have SMQT certification at the start of the contract.

Surveys to be conducted under Units C1, C2 and C4 in this component will be located in:

- Metropolitan Area Regional Office: Responsible for nursing homes in the five boroughs of New York City and the counties of Sullivan, Orange, Dutchess, Putnam, Rockland, Westchester, Suffolk and Nassau. Contractor staff will assist in surveying 221 of the 330 facilities in the region, with 31 of the 221 having 300 or more beds.
- Central New York Regional Office: Responsible for nursing homes in the 14 counties of Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Saint Lawrence, Tioga and Tompkins. Contractor staff will assist in surveying 54 of the 84 facilities in the region, with 4 of the 54 having 300 or more beds.

Off-Site investigations to be conducted under Unit C3 will utilize contractor staff located in:

- Central Office in Albany

Contractor staff will be located at the Department's Metropolitan Area Regional Offices (MARO) in New Rochelle, New York City and/or Central Islip; the Department's Central New York Regional Office (CNYRO); or the Department's Central Office. The Department will provide, at no cost to the contractor, office space, furniture and supplies; communications equipment including telephones, fax machines, personal computers and printers; and computer support services.

Training

For Component C, the required training includes, at a minimum:

- Web-based Basic Long Term Care Surveyor Training, approximately 15 hours in length
- CMS Sponsored Surveyor Minimum Qualifications Test (SMQT): The training is held nationwide, most common used location for the East Coast is Baltimore and Florida. The training is 4 to 5 days in length.

Contractor staff will be responsible for entering data into ASPEN and other data recording systems specified by the Department in accordance with the instructions and within the timeframes contained in the most current ASPEN manuals (current as of the time of data entry). As of the date of the release of this RFP, the following procedures are in effect (ASPEN Manuals Version 10.1.5):

- ASPEN Central Office (ACO) Procedures Guide
- ASPEN Survey Explorer – Quality (ASE-Q)
- Department program-specific procedures

For information on survey procedures, bidders should review:

http://www.cms.gov/manuals/downloads/som107ap_p_ltcf.pdf;
http://www.cms.gov/manuals/downloads/som107ap_pp_guidelines_ltcf.pdf;
http://www.cms.gov/manuals/downloads/som107ap_q_immedjeopardy.pdf;
http://www.cms.gov/manuals/downloads/som107ap_r.pdf; and
<http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c05.pdf>

UNIT C1: Federal Standard

The surveys described in this unit all begin as a standard survey, and may evolve into an expanded, extended or health revisit survey. The contractor staff will be responsible for conducting survey tasks, producing written documentation, drafting Statements of Deficiencies (SOD), assessing compliance with Plans of Correction (POC) and completing data entry in federal and State reporting databases as required.

A federal standard survey is a periodic, resident-centered inspection that gathers information about the quality of services furnished in a facility to determine compliance with the requirements of participation (see SOM Section 7001).

The number of standard surveys to be conducted annually to meet CMS requirements is estimated at one (1) per facility, unless otherwise identified by CMS as a Special Focus Facility (SFF). The nursing homes to be surveyed with contractor assistance all hold an active Medicare/Medicaid number and are licensed and operating in NYS.

At least ten percent (10%) of the Federal Standard Surveys above must be “Off Hours Surveys”, which start either on weekends/holidays or evening/early morning hours (before 8:00am or after 6:00pm) and are conducted daily until complete. Two percent (2%) of federal surveys are extended and include monitoring visits.

When deficiencies are cited during the course of a standard survey, the Department may, as necessary, conduct a post survey revisit (PSR) to determine if the facility now meets the requirements for participation (SOM Section 7203D).

Each survey is expected to take 42 hours per surveyor. Two contractor RNs will be required to participate in each survey along with NYSDOH staff for facilities with less than 300 beds (240 annual surveys). Facilities with 300 or more beds (35 annual surveys) require four contractor RNs to participate in each survey along with State staff. A federal standard survey may require revisits, state monitoring visits, and/or expanded/extended survey, which is included and reflected in the average hours of this unit.

The total expected numbers of surveys requiring contractor assistance are broken down by region as follows: 221 in MARO (31 having more than 300 beds) and 54 in CNYRO (4 having more than 300 beds).

A unit is considered complete and payment will be made to the contractor when:

1. The nursing home is in substantial compliance with all citations;
2. The Tracking Status is “10-Processing Complete” as identified in the tracking tab in ASPEN Central Office (ACO), all data is entered into ACO and AEM, and the survey is uploaded;
3. All letters are complete and sent to the facility including the Statement of Deficiencies; and
4. The survey is reviewed and approved by the supervisor, and passes quality assurance review processes.

UNIT C2: Onsite Investigation of an ASPEN Complaint Tracking System (ACTS) Case

This unit includes the onsite investigation of a case as recorded in ACTS. A case may be reported either as a third party reported complaint or a facility reported incident. Cases are reviewed and triaged, and then determined whether an onsite or offsite investigation is required. Multiple cases for a given nursing home can be bundled on an abbreviated complaint survey. An individual case as recorded in ACTS, must include an investigation summary, details of whether the allegations were substantiate or unsubstantiated, and written notification must be provided to the complainant and/or nursing home. An abbreviated survey may require revisits, state monitoring visits, and/or expanded/partial extended survey, which is included and reflected in the average hours of this unit.

The contractor will be required to provide one (1) or two (2) RNs for this Unit, in the Metropolitan Area or Central NY Regional Offices. Multiple on-site cases may be bundled on an Abbreviated Survey, which could include a Partial Extended Survey and/or a Revisit Health.

A unit is considered complete and payment will be made to the contractor when:

1. The case is closed in ACTS with a “Closed Date”, and all summary information is prepared in ACTS;

2. The abbreviated survey related to a case is uploaded in ACO, and nursing home is in substantial compliance;
3. The case is reviewed and approved by the supervisor, and passes quality assurance review processes; and
4. Letters in ACTS related to the case are completed and sent to the complainant and nursing home.

UNIT C3: Off-Site Investigation of an ASPEN Complaint Tracking System (ACTS) Case

An offsite investigation of a case is conducted when it is determined by the Department that a third party reported complaint or a facility reported incident is of a less serious nature (e.g., not widespread, a single occurrence) and a paper review can determine facility compliance without an on-site visit.

Information (written/verbal communication or documentation) may be obtained from the facility, complainant, Department, CMS Regional Office or other sources as applicable, for review to determine if the complaint or incident is appropriate for an off-site investigation. If the information obtained determines the seriousness of the complaint requires an on-site investigation, it is then referred to the Department's Unit Supervisor.

The contractor will be required to provide one (1) RN per investigation in the NYSDOH Central Office in Albany.

A unit is considered complete and payment will be made to the contractor when:

1. The case is closed in ACTS with a "Closed Date", and all summary information is prepared in ACTS.
2. The case was reviewed and approved by the supervisor, and passes quality assurance review processes.
3. The letters in ACTS related to the case are completed, sent to the complainant and nursing home.

Unit C4: Adult Day Health Care Programs (ADHCP)

In 1969, NYS enacted legislation governing the operation of ADHCPs, which incorporated the delivery of medical services. The legislation applied to operators of skilled nursing and health-related facilities. The intent of this legislation was to develop an alternative or deterrent to institutional care. By utilizing a facility's excess resource capacity, ADHCP's were expected to provide a cost-effective model of care, which would be as effective as institutional care.

ADHCPs are governed by regulations at 10 NYCRR Parts 425 and 759, and the relevant portions of regulations in 10 NYCRR Part 415.

Adult day health care programs are operated by a nursing home and located either onsite at the nursing home or at an approved extension site located outside of the nursing home. An ADHC program provides the health care services and activities provided to a group of persons, who are not residents of a residential health care facility, but are functionally impaired and not homebound, require supervision, monitoring, preventive, diagnostic, therapeutic, rehabilitative or palliative care services but do not require continuous 24-hour-a-day inpatient care. Services maintain their health status and enable them to remain in the community. Required services include nutrition, ongoing resident health assessment, coordinated care planning, case management and other health care services.

The Department is responsible for ensuring compliance through completion of an annual desk audit by utilizing the Program Survey Report and completing onsite surveys once every three years.

The Department is responsible for the survey of 167 Adult Day Health Care Programs (ADHCPs), statewide. Of the 167 ADHCPs, 63 are at extension clinics outside of the nursing home.

The contractor would be expected to provide one RN per survey, to perform 14 annual surveys (12 in the Metropolitan Area Regional Office and 2 in the Central New York Regional Office) for ADHCP at extension clinics in the NYC and Central New York areas.

A unit is considered complete and payment will be made to the contractor when:

1. The Adult Day Health Care Program (ADHCP) is in substantial compliance with all citations;
2. All data is entered into ASPEN Central Office (ACO);
3. All letters are complete and sent to the facility including the Statement of Deficiencies; and
4. The survey is reviewed and approved by the supervisor, and passes quality assurance review processes.

COMPONENT C

NURSING HOMES

Units C1 through C4

UNIT NUMBER	UNIT NAME	ESTIMATED STAFF NEEDED PER UNIT	APPROXIMATE UNITS TO BE CONDUCTED ANNUALLY	AVE. HOURS PER SURVEYOR*
C1	Federal Standard	2 SMQT Certified RNs for facility with less than 300 beds (240) 4 SMQT Certified RNs for facilities with 300 or more beds (35)	275 Federal Health 261 Revisits 10% Off Hours 2% Expanded/Extended	42 hours per person; hours reflect federal health, expanded/extended and revisits (Estimated total contract hours per survey: 84 hours for facilities with less than 300 beds, and 168 hours for facilities with 300 beds or more)
C2	Onsite Investigation of an ACTS Case	1 or 2 SMQT Certified RN	2,800 Onsite Cases 1% Partial Extended	10.50 hours to investigate an onsite case (Hours reflect abbreviated survey, partial extended, and revisits)
C3	Off-Site Investigation of an ACTS Case Intake	1 SMQT Certified RN	3,200 Offsite Cases	2 hours to investigate an offsite case
C4	Annual ADHCP Surveys (located outside of nursing home at extension clinic)	1 SMQT Certified RN	14 12 MARO 2 Central NY	14 hours

NOTE: Workload projections are based upon information available at the time of the RFP issuance, to be used by bidders in developing their proposals, and are in no way a guarantee of work to be performed under the contract.

* Includes all prep, onsite and travel time, and preparation of Statement of Deficiencies or other reporting as required.

COMPONENT D: INTERMEDIATE CARE FACILITIES/ INDIVIDUALS WITH INTELLECTUAL DISABILITIES

The Department is directly responsible for the surveillance and certification of the 16 Title XIX Provider Agreements for the developmental centers, which provide programs and services to approximately 1,450 individuals diagnosed with intellectual disabilities.

The New York State Office for People with Developmental Disabilities (OPWDD) operates these facilities and participates in the Medicaid (Title XIX) program. The 16 Developmental Centers (DC) differ from the almost 600 intermediate care facilities that OPWDD surveys directly. OPWDD is responsible for the survey of facilities with 4 to 50 residents in communities. OPWDD provides the Department with its recommendations; the Department makes the decision to allow the provider to continue to participate in Medicaid.

In addition to the direct survey of the 16 developmental centers, the Department is responsible for attending four percent (4%), or approximately 24, OPWDD surveys per year to ensure that all CMS prescribed protocols are followed.

Component D consists of five (5) units for which the contractor will provide staffing assistance, training and administration. The survey responsibilities for all units are governed by Title 1864 agreement between NYS and CMS NYS Plan for Title XIX of the Social Security Act (Medicaid Agreement) CFR Part 483 at:

http://www.access.gpo.gov/nara/cfr/waisidx_07/42cfr483.html

For each unit in Component D, contractors will be required to provide qualified professional staff including but not limited to RNs, MSWs and other clinical titles experienced with individuals with intellectual disabilities or in developmental disability facilities. Staff must have Qualified Individuals with Disabilities Professional (QIDP) Certification prior to hiring. Minimum qualifications are as follows:

- Registered Professional Nurse (RN): Currently licensed and registered in NYS, clinical experience with individuals with intellectual disabilities or in developmental disability facilities and QIDP Certification;
- Social Workers/other qualified staff: Recent clinical experience with individuals with intellectual disabilities or in developmental disability facilities and QIDP Certification

Surveys under this component will be conducted throughout New York State at the 16 Developmental Center facilities as follows:

- three in Brooklyn,
- one in Binghamton,
- two in Queens Village,
- one in Rochester,
- one in Schenectady,
- three in Tupper Lake,
- two in Wassauc,
- one in Norwich and
- two in West Seneca.

Contractor staff will be located in the Department's Central Office in Albany. The Department will provide, at no cost to the contractor, office space, furniture and supplies; communications equipment including telephones, fax machines, personal computers and printers; and computer support services.

Training

For Component D, the required training includes, at a minimum:

- CMS Sponsored Basic ICF/IID Training: The training is held nationwide, most frequently in Biloxi, MS and Minneapolis, MN, but has historically also been held in Baltimore, MD, Nashville, TN and Dallas, TX. The training is 4 to 6 days in length.

Contractor staff will be responsible for entering data into ASPEN and other data recording systems specified by the Department in accordance with the instructions and within the timeframes contained in the most current ASPEN manuals (current as of the time of data entry). As of the date of the release of this RFP, the following procedures are in effect (ASPEN Manuals Version 10.1.5). Training will be on-site or on-line as follows:

- ASPEN Central Office (ACO) Procedures Guide
- ASPEN Survey Explorer – Quality (ASE-Q)
- Department program-specific procedures

For information on survey procedures, bidders should review:

CMS State Operations Manual Appendix J at:

http://www.cms.gov/manuals/downloads/som107ap_j_ltcf.pdf

Unit D.1. Full/Fundamental Survey

A full survey is conducted at an initial survey and at the discretion of the Department, based on the Department's identification of concerns related to the provider's capacity to furnish adequate services.

The survey team, which may include NYSDOH and Contractor staff, reviews all the requirements in all Conditions of Participation to determine if the facility maintains the process and structure necessary to achieve the required outcomes. Based on the information collected, the team determines whether facility practice is in compliance with the Conditions of Participation.

A fundamental survey is conducted at least annually to determine the quality of services and support received by individuals, as measured by outcomes for individuals and essential components of a system which must be present for the outcomes of active treatment to occur.

All fundamental requirements must be reviewed in every annual recertification survey. When observations and interviews are complete, the team reviews the individuals' records, as needed, to verify observation and interview findings. If indicated, the team will verify that individual health needs are met and protections are in place. If all requirements are met, the facility meets the Conditions of Participation.

If standard level deficiencies are found during a full/fundamental survey, the survey is extended and the extension occurs contiguous to the full/fundamental survey.

When condition level citations are issued during the full/fundamental surveys and the team has determined or suspects that one or more Conditions of Participation examined during the survey are not met, the full/fundamental survey is considered "failed" and becomes an adverse action survey, which requires that a revisit be conducted within 60 days.

The survey team gathers additional information to identify the structural and process requirements that are not met and to support its condition-level compliance determination. The team reviews all requirements within the Condition(s) for which compliance is in doubt and using the condition-level compliance principles in the interpretive guidelines, determines if the facility complies with the relevant Condition(s) of Participation.

There are approximately 16 full/fundamental surveys conducted annually. Of these, two are small residential units, requiring less time on survey. In addition, approximately three per year become adverse action surveys, adding time to the survey. For the average time per survey, see the chart on page 28.

The Unit is complete, and the contractor may receive payment, when:

1. The survey and all extensions/adverse action functions are complete;
2. Findings have been entered into ACO within 10 days of the survey end date; and
3. A POC (if applicable) has been reviewed and found acceptable by the Department manager.

Unit D.2. Revisit – Health

When deficiencies are cited during the course of the survey, the Department will, as necessary, conduct a post-survey revisit to determine if the facility is now in compliance and meeting the requirements for participation (see SOM Section 7203D). The nature of the non-compliance dictates the scope of the revisit and composition of the revisit survey team (e.g., a revisit for Life Safety Code issues may only require a NYSDOH sanitarian, not contractor staff).

In accordance with SOM Section 7317, the Department conducts a revisit, as applicable, to confirm that the facility is in compliance and has the ability to remain in compliance. On-site revisits are generally necessary to ascertain whether deficient practices have been corrected.

There are approximately 16 revisits annually, occurring approximately 6 months after the fundamental survey for which the contractor will provide up to 3 staff per survey.

The Unit is complete, and the contractor may receive payment, when:

1. The revisit survey is complete;
2. Findings have been entered into ACO within 10 days of the survey end date; and
3. A POC (if applicable) has been reviewed and found acceptable by the Department manager.

Unit D.3. Onsite Complaint Investigation

When a complaint is received, either as a third party reported complaint or a facility reported incident, it is entered in the ASPEN Complaint Tracking System (ACTS) and reviewed and triaged by the Department. If it is determined that an onsite investigation is required, contractor staff may be required to complete the investigation (NOTE: multiple complaints for one ICF/IID may be bundled in one investigation).

The contractor staff is required, for each individual complaint (whether or not bundled into one onsite investigation), to record an investigation summary, details of whether the allegations were substantiated, and written notification must be provided to the complainant and ICF/IID. The investigation may require a partial extended survey which is included in the average unit hours.

Any required revisits would be included under Unit D.3.

It is estimated that one contractor staff will attend 100 onsite complaint investigations annually, averaging 18.50 hours each.

The Unit is complete, and the contractor may receive payment when:

1. All summary information is recorded and the case is closed in ACTS with a “closed date”;
2. The onsite complaint investigation information is uploaded in ACO and the ICF/IID is in substantial compliance;
3. The letters in ACTS related to the investigation are sent to the complainant and ICF/IID; and
4. The case is reviewed and approved by the Department manager, passing quality assurance review processes.

Unit D.4. Certification Review

The Department is responsible for certifying provider agreements for community based ICF/IID facilities licensed by OPWDD. These facilities are surveyed by OPWDD and certified for Title XIX participation by the Department. As the State Medicaid Agency, the Department must review each OPWDD recommendation and certify that the provider is in compliance with Federal and State requirements.

Contractor staff will be responsible for the review of approximately 568 OPWDD recommendations annually and certifying the provider is in compliance. Each review takes approximately 1 hour to complete and occurs at the Central Office in Albany.

The Unit is complete and the contractor may receive payment when: 1. The provider agreement is issued or denied, and 2. All data has been transmitted to CMS through ACO.

Unit D.5. State Oversight and Supervision Surveys

The Department is responsible for supervising OPWDD survey activity to ensure that all CMS prescribed protocols and processes are followed. Of all OPWDD ICF/IID surveys conducted annually, one contractor surveyor will attend 4% (or 24), averaging 20 hours per survey. Contractor staff will be required to provide onsite supervision and analysis of OPWDD ICF/IID recertification surveys to ensure OPWDD compliance with Federal survey protocols.

The Unit is complete and the contractor may receive payment when the first of the following occurs:

1. A report of compliance with CMS protocols is issued to OPWDD; OR
2. A report of noncompliance is issued to OPWDD and an acceptable POC is received by the Department.

NOTE: If an acceptable POC is not received by the Department in a timely manner, the Department manager will follow up and the contractor will be paid.

COMPONENT D

INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

Units D1 through D5

UNIT NUMBER	UNIT NAME	ESTIMATED STAFF NEEDED PER UNIT	APPROXIMATE UNITS TO BE CONDUCTED ANNUALLY	AVE. HOURS PER SURVEYOR*
D1	Full/Fundamental Survey:			
	Developmental Center (DC)	3	14	71
	DC – Small Residential Unit	3	2	33
	Adverse Action	3	3 (subset of the 16 above)	Add'l 37
D2	Revisit – Health	3	16	37.5
D3	Onsite Complaint Investigation	1	100	18.50
D4	Certification Review	1	568	1
D5	State Oversight and Supervision Survey	1	24	20

NOTE: Workload projections are based upon information available at the time of the RFP issuance, to be used by bidders in developing their proposals, and are in no way a guarantee of work to be performed under the contract.

* Includes all prep, onsite and travel time, and preparation of the Statement of Deficiencies or other reporting as required.

IV. Proposal Development

Bidders may choose to bid on one or more of the four (4) Components. Responses for each component will be scored and ranked separately in accordance with the criteria set forth below. The Department reserves the right to award each component separately, or together with other components.

Bidders must propose to undertake ALL units within a component. The Department reserves the right to disqualify or award one or more components submitted within a proposal while not disqualifying or awarding the entire proposal.

A. ELIGIBILITY REQUIREMENTS

The Department will accept Proposals from health care review organizations, health care organizations with the potential to initiate the quality assurance programs described in the Components of this RFP; business groups and councils interested in conducting the functions described in this RFP, health care insurers and other existing or potential proprietary or private review organizations.

In order to qualify, an organization must be composed of, or have available to it, the services of licensed health care professionals and other professionals with the experience and training necessary to conduct the required review activities, and have three years' experience providing staffing or conducting surveillance activities in one or more components in the RFP.

A bidder cannot be a health care facility provider, an association of health care facilities, or a health care facility affiliate in New York State. The potential Contractor must provide assurance that it has no conflict of interest with respect to conducting the duties and responsibilities of the Component(s) included in the proposal.

B. TECHNICAL PROPOSAL

A technical proposal consists of:

- Transmittal Form (one per proposal)
- Table of Contents
- Proposal Narrative (one per component – up to 4 per proposal)
- Lobbying Form (one per proposal) – See Section V.L. and Attachment E

FOR THE PURPOSES OF PROPOSAL DEVELOPMENT ONLY, BIDDERS SHOULD ASSUME COMPLETING THE MAXIMUM NUMBER OF SURVEYS PER YEAR AS DETAILED IN THE CHARTS IN SECTION III.

1. Transmittal Form

The Proposal Transmittal Form (Attachment C) will be evaluated as part of the Compliance Evaluation screening. Failure to comply may result in disqualification of the Bidder's proposal. The Transmittal Form should include:

1. The Bidder's complete name and address;
2. The legal structure of the entity submitting the offer;
3. New York State Vendor ID Number, if known;
4. The Charities Registration Number, if a non-profit entity;

5. The name, mailing address, email address, fax number and telephone number for both the authorized signatory and the person the Department should contact regarding the proposal;
6. The Components for which the bidder is submitting a proposal

the following Bidder attestations:

- a. the Bidder has at least three years' experience providing staffing or conducting surveillance activities in one or more of the components in the RFP;
- b. the Bidder accepts the contract terms and conditions contained in this RFP including any exhibits and attachments and has received and acknowledged all Department amendments to the RFP, as may be amended;
- c. the Bidder is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department;
- d. the Bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;
- e. the proposal of the Bidder, including all pricing, will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals;
- f. the Bidder either:
 1. includes a disclosure of any potential conflict of interest, including but not limited to, all business, financial, or beneficial relationships or interests as defined in the State Operations Manual Section 7202 (<http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107c07.pdf>). In cases where such a relationship(s) and/or interest(s) exists, the Bidder should (i) describe how an actual or potential conflict of interest and/or disclosure of confidential information relating to an award under this RFP will be avoided, and (ii) state that the Bidder guarantees knowledge and full compliance with the New York State Public Officers' Law, as amended, including but not limited, to Sections 73 and 74, with regard to ethical standards applicable to State employees; **OR**
 2. states there is no conflict(s) of interest.
- g. The Bidder does/does not propose to utilize the services of a subcontractor(s). If the proposal includes the services of a subcontractor(s), the Bidder should include, in an attachment to the Transmittal Form, a subcontractor summary for each subcontractor, including:
 1. Complete name of the subcontractor;
 2. Complete address of the subcontractor;
 3. A general description of the type and scope of work the subcontractor will be performing;
 4. Percentage of work the subcontractor will be providing;
 5. A statement confirming that the subcontractor is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department;
 6. Written confirmation that the subcontractor agrees to comply with all commitments agreed to by the Bidder in performing the contracted work as well as agreement with the project and the costs and a commitment to perform work indicated in the time period specified; and

7. The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or handicap.

and the following Vendor Responsibility information:

- a. The Bidder has an up to date VR Questionnaire on VendRep; OR
- b. A paper VR Questionnaire is included in the proposal; OR
- c. The Bidder is exempt from filing a VR Questionnaire

The Transmittal Form should be signed by an individual authorized to bind the Bidder in a contract with New York State.

Evidence of failure to comply with these attestations may result in disqualification from the procurement process or withdrawal of any proposed contract award.

2. Table of Contents

The Table of Contents should provide detail for evaluators to easily distinguish the narrative and accompanying materials for EACH component included in the proposal.

Each component section should be numbered separately, beginning with the component letter (e.g., the Adult Care Facility Component narrative would begin with page A-1).

3. Project Narrative(s)

A separate proposal narrative should be submitted by the bidder for EACH component proposed (**i.e., up to four narratives per proposal**). Each proposal narrative has the following page limits:

- Executive Summary: 3 double-spaced pages
- Project Narrative: 50 double-spaced pages, not including resumes of any current surveillance staff to be assigned to the component
- Annual Work Plans: 2 pages per year (6 pages total)

For purposes of scoring, evaluators will be instructed to cease reading each proposal narrative at the end of the page limits described above.

The bidder's proposal narrative for each component proposed should include their understanding of, and ability to provide, the services as outlined in Section III. Proposals should be direct, clear and concise. Ambiguity in the proposal will not be interpreted in favor of the bidder. **Each component project narrative should include, at a minimum:**

a. Executive Summary

An Executive Summary, of no more than three (3) of the 53 pages, should be included which condenses and highlights the contents of the bidder's Technical Proposal, to provide the Department with a broad understanding of the entire Technical Proposal for the component and summarize the bidder's understanding of the goals and objectives of the component.

It should include a clear and concise summary of the proposed approach to the scope of work as outlined in Section III of the RFP, the proposed staffing structure, the overall organizational experience and capabilities and planned roles of any subcontractors.

b. Project Narrative

NOTE: For all subcontractors included in the transmittal form requirements that the bidder intends to use in fulfilling the requirements of the component, the role and relevant experience of the subcontractor(s) should be clearly defined and described where appropriate within the items below.

- i. A description of how the bidder meets the minimum criterion of having at least three years' experience in providing staffing for or conducting surveillance activities and is one of the eligible bidders as detailed above.

The description should include a discussion and documentation of the bidder's skills and experience with the type of services described and address the bidder's experience with the appropriate provider types and unit requirements, including:

- Interpreting and applying statutes, rules, regulations and policies/procedures appropriate to the unit(s) and representative of the appropriate provider types located in New York State and/or elsewhere; and
- Performing survey, inspection and other quality assurance activities as appropriate to the unit(s) in New York State and/or elsewhere.

Relevant skills and experience could include:

- Performing accreditation surveys and determinations;
- Providing consultant services on maintaining compliance with statutes, rules and regulations;
- Providing advice and/or representation on survey, licensure, certification and recertification processes and issues;
- Providing consulting services on quality assurance processes to those local, State or federal governmental agencies responsible for licensure and/or certification of health care providers;
- Contracting with local, State and/or federal licensure or certification agencies to conduct statutorily or regulator required quality assurance activities; and/or
- Interviewing persons with questions or complaints about quality of care.

Proposal should demonstrate success in providing survey and investigation services for state or federal government programs, describing the relevance of this experience to New York State's requirements, rules and regulations.

Provide references for three of the projects described in the organizational experience above that have been within the past five (5) years. **References will be used to verify the information provided in the narrative and any incorrect information may result in disqualification of the Proposal.** Include, at a minimum:

- The client/organization name and address;

- A brief description of the project including start/end dates of the engagement;
 - Information on any litigation that arose concerning the work described, including litigants, issues in dispute, current status of litigation and/or outcome; and
 - A contact name, telephone number and email address.
- ii. A demonstration of how the bidder will successfully meet the requirements of the component, as described in Section III of the RFP. The narrative should include:
- a) A detailed description of the process to be used to recruit and retain an adequate level of staff meeting at least the minimum qualifications to complete all unit deliverables within the component, including:
- a start-up activities timeline that illustrates the bidder's ability to produce the required staff in a timely fashion, with a description of ability to find and hire qualified staff and the types and specialties of the staff who will be performing the unit activities.
- Describe in detail the process, including any past job postings for these types of positions, to be utilized in hiring new staff.
- Describe the process to be used to ensure staff are trained appropriately for the component, as detailed in Section III.
- For the Nursing Home Component (Component C), describe:
- a) the ability to have at least 50% of the staff hired at the start of the contract period possessing SMQT certification;
 - b) the ability to ensure the remaining staff will be certified within 12 months; and
 - c) a strategy to ensure SMQT certified staff availability throughout the duration of the contract term.
- For all other components, describe how the minimum training requirements will be fulfilled in a reasonable timeframe for all staff.
- The bidder's understanding of the tasks required under each unit including access to and understanding of the environment in which the surveillance, complaints and investigations function, and an understanding of HIPAA requirements and Medicaid privacy and confidentiality as they apply to each component.
 - The methods, policies and procedures for conducting the activities detailed in the units. Where appropriate, provide data and/or evidence based on past experience, published data, or other appropriate information to justify a specific approach or

decision on the conduct of any specific activities. Describe an effective system for timely undertaking and completion of all unit activities.

- How the bidder will assure the availability of staff to perform activities in all of the areas of the State required in each component, and any plan for distribution of staff among the various units of the component.

If submitting a proposal for more than one component, and any staff will be utilized across components, the distribution plan in each component narrative should demonstrate how the staff will be allocated across components and describe the feasibility of this approach, including appropriate staff qualifications and training. In addition, an alternative plan should describe staffing in the event not all components included in the bid are awarded to the bidder.

- a description of the roles and responsibilities, by title, for all contractor staff carrying out the units;
- the expected number of staff needed to provide a full complement of staff as described for the anticipated annual number of surveys and units within the component.

- b) The bidder should describe in detail their organizational structure, including an organizational chart, and the background and experience of the officers, executives and key staff that would be assigned to manage the component, ensuring all staffing, reporting and other management activities are completed.

Include a brief description of the background of key staff in this type of work and estimate the share of time each key staff would allocate to the component and the rationale for that time allocation. Key staff includes any support staff to be assigned to the project.

Resumes of key staff are not required.

- c) Detailed description of the approved method and formats for collecting, monitoring and reporting data, conducting data analysis and generating reports required by the RFP component.

Provide copies of formats for reporting findings to the Department other than those provided by and required by the Department.

Demonstrate the bidder's ability to ensure all complaint and survey processes will be performed in accordance with the instructions and timeframes contained in the current versions of the ASPEN manuals (ACO Procedures Guide, ACTS Procedures Guide and ASE Procedures Guide available at www.gtso.com/aspemanguide.html) and other relevant CMS and Department program-specific procedure.

Provide data confidentiality plans and procedures as well as a plan for meeting HIPAA requirements as they relate to the RFP and the units within each component, including all plans as they relate to subcontractor work where applicable. Describe procedures the bidder will use to ensure the confidentiality of all information collected by the bidder or subcontractors. See Attachment G, Appendices H and I, which will become part of an executed contract.

- d) Description of how the bidder will develop and maintain links and communication with the Department including a system for transmitting ongoing review activity and required periodic reports, feedback to changes in policy and procedures, and the ability of key management staff to attend required meetings at Department offices and be available for conference calls.

Include a description of internal control method for oversight and monitoring of subcontractors if applicable.

c. Annual Work Plans

Include annual work plans and timelines for projected activities for the component over the initial three-year contract term. Work plans should include all relevant activities, timeline for completion of activities and person(s) responsible for completion. The timeline should be realistic and the activities should be reflective of the project specifications.

C. COST PROPOSAL

The Cost Proposal consists of:

- Price Proposal Form(s) (Attachments D1 – D4)
- M/WBE Procurement Forms (See Section V.Q. and Attachment F)

ESTIMATES OF THE MAXIMUM WORKLOAD ARE PROVIDED IN THE COMPONENT CHARTS IN SECTION III FOR PURPOSES OF PROPOSAL DEVELOPMENT. BIDDERS ARE ENCOURAGED TO USE INDUSTRY EXPERIENCE IN DEVELOPING THEIR COST PROPOSALS AND WILL BE RESPONSIBLE FOR COMPLETION OF ALL REQUIRED UNITS AT THE PRICES INCLUDED IN THE PROPOSAL.

1. Price Proposal Form(s)

Bidders should complete a Price Proposal Form (Attachments D1- D4) for EACH component for which a proposal is submitted.

The Price Proposal Form must contain unit pricing for ALL units to be considered for an award.

Unit prices are all inclusive, i.e., it must include any costs associated with providing the required staffing and administrative functions to complete the units, as detailed in Section III of the RFP. No additional payment for any costs incurred (e.g., administrative, travel, training, etc.) will be made to the contractor.

No exceptions or contingencies should be included in the Cost Proposal. Inclusion of exceptions or contingencies may result in the proposal being declared non-responsive.

By signing the Price Proposal Form(s), the bidder agrees that the unit prices are fixed and remain valid for a period of 365 days.

In developing a price proposal, bidders should note that the numbers of units presented in Section III are based on historical data of surveys/investigations/etc. requiring contractor staffing assistance. These numbers are not a guarantee of future need. Bidders should use the numbers presented to develop proposals that reflect the bidder's understanding of, and ability to provide, a full complement of the required staffing and services for the information presented. However, at any time, the Department reserves the right to revise the number of units requiring contractor staffing assistance based on any or all of the following considerations:

1. Funding availability
2. Availability of State staff

Upon award, the Department will detail the number of units to be provided by the Contractor, and staffing will be decided accordingly. If the needs change further during the contract period, the Department will give the Contractor proper notice of any staffing need changes.

The unit prices proposed by the bidder in the price proposal sheets for each component will be held in effect for the full three years of the initial contract period. After the first three-year contract period, the Department may exercise its option to renew the contract for one two-year period, for a total contract term of five years. The prices for the two year extension will be eligible for an inflationary increase of the lesser of two (2) percent or the percent increase in the National Consumer Price Index for all Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington D.C. 20212, for the 12 month period ending ninety (90) days prior to the renewal date for contract year three. As with all State contracts, the duration of the contract and any increase are subject to availability of funds.

D. BIDDER'S FINANCIAL CAPACITY AND STABILITY

If requested by the Department during the evaluation process, bidders should be prepared to provide evidence of their financial ability to perform the terms and conditions of the contract. Each bidder should be able to provide independently audited financial statements (not annual reports) for the last three full years of operations, even if they are proprietary in nature.

If a bidder is not required to have audits performed, other evidence of financial ability to perform this project should be available. At a minimum, this should include a Comprehensive Dunn and Bradstreet Report and the last three full years of internal financial statements.

In addition, the information as described above should be available for major subcontractors. If the bidder proposes to subcontract any portion of the work required under the contract and the subcontractor will be paid more than \$100,000, the subcontractor should have the same financial information available for submission as is required in this section for the bidder.

E. METHOD OF AWARD

The Department will establish separate technical and cost evaluation committees and conduct a comprehensive and impartial evaluation of all proposals submitted. It is expected that the evaluation committee will be comprised of State staff that work for, or in conjunction with, the Department. The

Department may designate other individuals to serve as staff to the committee and to provide assistance in the evaluation process.

At the discretion of the Department of Health, all bids may be rejected. The Department will conduct a fair, comprehensive, and impartial evaluation of each Component proposal received within the stated timeframe in response to this RFP. Program staff from within the Department will evaluate Technical and Cost Proposals, and all documentation submitted by Bidders. At any time during the evaluation, the Division may request clarification from any Bidder regarding any part of their proposal.

The technical and cost proposals for each Component submitted will be evaluated separately. The results of the technical and cost evaluations will be weighted and combined for purposes of awarding contracts. The weighting will be as follows: 70% of the total points allowed for the technical proposal, and 30% of the total points allowed for the cost proposal.

Four awards (one per Component) may be given out to up to four bidders under this RFP.

Responses to each section of the RFP comprise a proposal. The clarity, specificity, thoughtfulness, and completeness of the response will determine how well a proposal scores. The specific evaluation process will include a:

- Compliance Evaluation;
- Technical Proposal Evaluation;
- Cost Proposal Evaluation; and
- Final Selection and Contract Award.

1. Compliance Evaluation

The Department will check each proposal to determine if the following minimum requirements were successfully met:

- The technical and cost proposals are submitted prior to required deadline;
- The cost proposal is submitted separately from the technical proposal;
- The bidder is an eligible entity as described in Section IV of the RFP;
- Bidder attests to having at least three years' experience as detailed in the RFP;
- Bidder attests to provide staffing for all units within each component included in proposal; and
- The Price Proposal Form(s) (Attachments D1-D4) contains pricing for all units within each component included in the proposal.

In addition, the Department will also check for submission and completeness of the following:

- Signed Transmittal Form (Attachment C), including required attestations;
- A complete Lobbying Form (Attachment E);
- Complete Price Proposal Form(s) (Attachment D);
- A complete M/WBE Utilization Plan or evidence of certified M/WBE status (Attachment F).

Proposals found to be incomplete, inaccurate or non-responsive may be disqualified for any or all of the Components submitted. Only those proposals for components meeting the minimum requirements will qualify for the comprehensive technical and cost evaluation processes. The Department reserves the right to waive minor irregularities at its discretion or request clarification from bidders.

2. Technical Proposal Evaluation

The Department will conduct a comprehensive technical evaluation of the proposals that meet the provisions of the compliance evaluation. The Department will examine whether all critical elements described in the RFP have been addressed, the quality of meeting the requirements in each proposed area, the capabilities of the Bidder, and any other aspect determined relevant by the Department.

The highest scoring technical proposal in each component will receive the maximum score of 70 points for that component. Other Bidders will receive a proportionate score for that component according to the following formula:

$$t = (a/b) \times 70 \text{ where}$$

a = technical score for proposal being scored,
b = technical score of the highest scoring proposal,
t = normalized technical proposal score for Bidders being scored

3. Cost Proposal Evaluation

The Department will evaluate cost proposals for all Bidders that meet the minimum requirements of the compliance evaluation. The evaluation team for the cost proposal evaluation will be comprised of different individuals than the technical proposal evaluation team.

The Bidder with the lowest total bid in each component will receive the maximum score of 30 points for that component. Other Bidders will receive a proportional score for that component using the following formula:

$$r = (n/z) \times 30 \text{ where}$$

n = lowest total cost,
z = total cost for Bidder being scored,
r = normalized cost score for Bidder being scored

4. Final Selection and Contract Award

At the conclusion of the evaluation of the technical and cost proposals the Department will identify the bidder that reflects the “best value” to the Department. Best value is defined as the basis for awarding contracts for services to the bidder, which optimizes quality, cost and efficiency among responsive and responsible bidders, demonstrated as the highest total normalized score.

The Department may award multiple contracts under the RFP, but only one bidder will be selected for each component. For ease of administration, the Department may develop only one contract for multiple components if a bidder is awarded more than one component.

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

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

5. Notification of Award

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

V. ADMINISTRATIVE

A. Issuing Agency

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

B. Inquiries and Letter of Interest

Any questions concerning this solicitation must be submitted in writing prior to the date listed on the RFP cover page, and directed to the contacts listed on page i of the RFP. Submission via email is preferred when possible at ltcsurv@health.state.ny.us.

Interested bidders are requested but not required to submit a letter of interest (Attachment B) to notify the New York State Department of Health of the Bidder's intention to develop a proposal in response to this RFP. Please submit by the date on the RFP cover page to the contacts listed on page i of the RFP, or via email (preferred) to ltcsurv@health.state.ny.us.

Questions and answers, as well as any RFP updates and/or amendments, will be posted on the Department of Health's website at <http://www.health.ny.gov/funding/> on or about the date indicated in the Schedule of Key Events on the RFP cover page.

Prospective bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the contract, are to be raised in the form of a question prior to the closing date for submission of written questions.

C. Submission of Proposals

Interested Vendors should submit proposals according to the detailed submission requirements below.

These instructions prescribe the format and content of the bidder's proposal and are designed to facilitate the submission of a proposal that is easy to understand and evaluate. Failure to adhere to these instructions may result in the disqualification of the Proposal.

A Proposal consists of two distinct parts:

- (1) Technical Proposal, and
- (2) Price Proposal

and should be submitted as follows:

Technical Proposal

Two (2) signed originals, ten (10) copies in hardcopy format and **one (1) electronic copy** in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only.

Cost Proposal

Two (2) signed originals, six (6) copies in hardcopy format and **one (1) electronic copy** in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only.

Aside from the CD requirements above, no electronic or email submissions will be accepted. Proposals must be received no later than the time on the day specified on the cover page of the RFP. Proposals should be clearly marked with the RFP name and RFP #15365 and directed to the contact listed on page i of the RFP.

Late bids, for whatever reason, including delay by the carrier or not being received in the Department's mail room in time for transmission to 875 Central Avenue, will not be considered.

The following formatting should be used:

- All proposal materials should be printed on 8.5" x 11" white paper, double-sided;
- All pages should be clearly numbered per the Table of Contents;
- Eleven (11) point font or larger should be used;
- Technical Proposal materials should be presented in 3-ring binders (i.e., easily separable if necessary), separate from the Price Proposal; and
- The Price Proposal should be submitted with binder clips or in 3-ring binders (i.e., easily separable if necessary), separate from the Technical Proposal.

Original proposals should be marked as such. Where signatures are required, the original proposals should be signed in ink. Electronic signatures are not acceptable.

The proposal should be as specific as possible in its responses to provide the Department with an adequate understanding of the intent of the RFP. Proposals should be self-contained. No models, videotapes, illustrations, brochures or Web site postings will be accepted.

In the case of any discrepancy between the electronic and the hard copy documents the hard copy shall supersede.

D. Department of Health Reserved Rights

The Department reserves the right to:

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of proposals;
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;

7. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the proposals received;
15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 365 days from the bid opening; and
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation.

E. Payment

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

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at:
DOHaccountspayable@ogs.ny.gov with a subject field as follows:
 Subject: <<Unit ID: 3450467>> <<Contract #TBD>>

(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 3450467
 PO Box 2093
 Albany, NY 12220-0093**

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, by Email at

epunit@osc.state.ny.us or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or 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, 9th 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:

In all circumstances, the Bidder must bid on all units within a component and all services within the units of service as described in Section III of the RFP.

The Contractor may not bill the Department for a Unit until the Unit is complete. The information about when each Unit is complete for the purposes of billing for the Unit is included in Section III of this RFP for each Unit. The time at which the Contractor may bill for a Unit is not necessarily the point in the process where all activities related to a Unit have been completed. Nevertheless, the Contractor must complete all the activities required for the Unit within the required time frames or face penalties as described below.

Once a unit is complete, the contractor may bill at the bid price for that unit. Contractors will bill monthly for all units completed within that month. Payment will be made provided all required reporting related to the completed units has been received. Incomplete or missing reporting may also result in the penalties described below.

Bid prices include all costs associated with a unit. Only one payment will be made for each discreet unit instance. No additional payment of any kind will be made for each discreet unit instance.

Penalties

The contracts awarded for the Components of this RFP are subject to a variety of penalties based on performance standards as determined by the Department. The Bidder must take these penalties into account and understand that there will be no exceptions to the enforcement of these penalties if the performance standards are not met. Penalties described in this section are cumulative unless they are described below as being alternative.

1. Competent Statement of Deficiencies (SOD).

For Units of service that require the Contractor to complete and submit an SOD to State staff for review, the Bidder must assure that Contractor staff are properly trained and able to prepare competent and professional SOD. If Department staff rejects more than 20% of the Contractor's SODs for a Unit during any month in which the contract is in effect, the Bidder's payment for those

Units with rejected SODs will be reduced by 10% in the nature of a penalty for failure of performance.

In addition, should the Department reject more than 20% of a Contractor's SODs for a Unit during any month, the Contractor must submit a written plan to the Department by the 15th day of the following month, showing how the Contractor will cure this deficiency within 60 days. Failure to submit the remediation plan in a timely manner will result in a penalty to the Contractor of 1% of all billings for the Unit to which the plan applies in the month during which the remediation plan was due. Failure to implement the plan will result in a penalty of 1% of all billings for Unit until the plan is implemented.

The penalties in this paragraph are cumulative, not alternative.

2. Timely closing of complaints.

Complaints must be closed within 180 days of assignment for nursing homes and within 120 days for ACF and Home Care complaints. Other periods for timely closure of complaints will be included in the contracts resulting from this RFP. Any failure to meet closing dates for any complaint type will invoke the penalties described below.

For any complaint investigation for which the Contractor is paid prior to closure, 10% of the amount billed will be held by the Department to assure timely closure. If the complaint has not been closed within 180 days of assignment, or 120 days, as applicable, the Contractor will be penalized 10% of the billing for that complaint Unit.

For any complaint which is not billed until after closure, the Contractor is subject to a penalty of 10% of the billing for that complaint if the complaint was not closed within 180 days of assignment, or 120 days, as applicable.

3. Failure to replace terminated staff.

The Contractor must have a plan in place for replacing Contractor staff assigned to the contracts awarded pursuant to the RFP who resign or are terminated. Staff replacements must be submitted to the Department for approval within 30 days of the last day worked on the contract. Failure of the Contractor to implement this plan will result in a penalty of \$1,000 per week for each week that the plan is not implemented.

For each Contractor staff member replacement not submitted to the Department for approval within 30 days of last day of work, the Contractor will be subject to a penalty of \$100 per day for which the staff line remains unfilled.

4. Failure to meet monthly, quarterly, and annual deliverables.

Section III describes the maximum number of Units which the Department anticipates to complete during a calendar year with contractor staff assistance. For each year of the contract, a specific deliverables schedule will be developed between the Contractor and the Department and included as Appendix D-2 to the contract. This schedule will indicate how many of each Unit is to be completed by the Contractor on a monthly, quarterly and annual basis. Failure to complete Units as required in each annual Appendix D-2, will subject the Contractor to a penalty.

For each monthly deliverable not met, the penalty will be 10% of the value of the uncompleted Units for the month. For each quarterly deliverable not met, the penalty will be 25% of the value of

the uncompleted Units for the quarter. For each annual deliverable not met, the penalty will be 100% of the value of the uncompleted Units for the year, plus the amount of any federal financial participation disallowed by CMS as a result of the failure to comply with federal standards.

5. Failure to field qualified staff

Each Unit lists required qualifications for the Contractor staff who will be performing the activities of that Unit. If the Contractor fails to provide sufficient qualified staff to perform Unit functions as required by the Department, a penalty will be imposed.

For each staff function listed on Forms TP-1 and TP-2, for which staff is not provided for more than 15 consecutive days in any period, there will be a penalty of \$100.

6. Failure to file required reports on time.

If the Contractor fails to submit any report required by the Contracts issued pursuant to this RFP by the date such report is due, there will be a penalty for each late report of \$250. This penalty may be waived if the late filing of the report was not due to the fault of the Contractor.

7. Failure to complete required processes within the required time frames, e.g. reports, follow-up inspections, reviews, etc.

Each of the Units includes a description of the standards under which the quality activity will be conducted. These standards, federal and State law and federal, State and Department regulations include time constraints within which certain activities must be performed. Whenever, under any of these standards, Contractor staff has a duty, obligation or charge to take action within a particular time frame and does not do so within that time frame, there will be a penalty of 10% of the value of the Unit for which time frames were not met. This penalty does not apply to a failure to close a complaint on a timely basis.

8. Violations of HIPAA or Medicaid confidentiality or privacy; breach of information security (see Section N below); breach of any other confidentiality or privacy requirement of law or regulation.

Any violation by a Contractor of these requirements which violation results in a fine or penalty being imposed on the State of New York, will subject the Contractor to a penalty equal to twice the amount of the fine imposed on the State. In addition, the Contractor will hold the State harmless and reimburse the State for any damages or other costs to which the State may be subject as a result of the Contractor's violation of these requirements.

F.Term of Contract

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

The anticipated contract term is for three years, July 1, 2014 through June 30, 2017, with the option for one (1) two-year renewal.

The unit prices proposed by the bidder in the price proposal sheets for each component will be held in effect for the full three years of the initial contract period. After the first three-year contract period, the Department may exercise its option to renew the contract for one two-year period, for a total contract term of five years. The prices for the two-year extension will be eligible for an inflationary increase of the lesser of two (2) percent or the percent increase in the National Consumer Price Index for all Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington D.C.

20212, for the 12 month period ending ninety (90) days prior to the renewal date for contract year three. As with all State contracts, the duration of the contract and any increase are subject to availability of funds.

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.

G. Public Information

Disclosure of information related to this procurement and the resulting contract shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Article 6 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are exempt from disclosure. Information constituting trade secrets or critical infrastructure information for purposes of FOIL shall be clearly marked and identified as such by the Contractor upon submission. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

H. Debriefing

Once an award has been made, bidders may request a debriefing of their proposal. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

I. Protest Procedures

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

J. 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 or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website 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.

K. State Consultant Services Reporting

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

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

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

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at:

<http://www.osc.state.ny.us/procurement/>.

L. 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 bidders 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 Bidders. 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 (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.

M. 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.

N. Information Security Breach and Notification Act

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual’s unencrypted personal information plus one or more of the following: social security number, driver’s license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual’s financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.dhses.ny.gov/ocs/breach-notification/>.

O. 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 bidder 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. Bidder shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

ST-220-TD:

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

ST-220-CA:

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

P. 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.

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

NEW YORK STATE LAW

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

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned

business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

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

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

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

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

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

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.
- 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 [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

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

Equal Employment Opportunity Requirements

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

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

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

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

R. 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.

VI. CONTRACT APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposals, excluding blank Attachments A through F and the entire Attachment G "Sample Standard NYS Contract Language and Appendices", will itself be included as an appendix of the contract.

- ☐ APPENDIX A - Standard Clauses for All New York State Contracts
- ☐ APPENDIX B-1 – Questions and Answers
- ☐ APPENDIX B - Request for Proposal
- ☐ APPENDIX C - Proposal
The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- ☐ APPENDIX D - General Specifications
- ☐ APPENDIX E
Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:
 - ☐ Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
 - **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR

- **C-105.2** – Certificate of Workers’ Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** – Certificate of Workers’ Compensation Self-Insurance, Or **GSI-105.2** – Certificate of Participation in Workers’ Compensation Group Self-Insurance.
- Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
 - **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers’ Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **DB-120.1** – Certificate of Disability Benefits Insurance
 - **DB-155** – Certificate of Disability Benefits Self-Insurance
- Appendix G - Notices
- Appendix H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)
- Appendix 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)

VII. LIST OF ATTACHMENTS

Attachment A:	NYS Department of Health No Bid Form
Attachment B:	Letter of Interest
Attachment C:	Transmittal Form
Attachment D:	Price Proposal Forms
Attachment E:	NYS Department of Health Lobbying Form
Attachment F:	M/WBE Procurement Forms
Attachment G:	Sample Standard NYS Contract Language and Appendices

ATTACHMENT A

NEW YORK STATE DEPARTMENT OF HEALTH

NO-BID FORM

PROCUREMENT TITLE: Surveillance and Investigation Activities for Adult Care Facilities, Home Care Services
Agencies, Nursing Homes and Intermediate Care Facilities

RFP #15365

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)

<hr/> <p>(Officer Signature)</p>	<hr/> <p>(Date)</p>
<hr/> <p>(Officer Title)</p>	<hr/> <p>(Telephone)</p>

(e-mail Address)

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

ATTACHMENT B

LETTER OF INTENT TO DEVELOP A PROPOSAL IN RESPONSE TO RFP

This is to notify the New York State Department of Health of this bidder's intention to develop a proposal in response to RFP #15365 "Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies, Nursing Homes and Intermediate Care Facilities".

It is understood that this Letter of Intent is not binding on either party but simply alerts the Department of Health of the bidder's intentions and assures that the bidder will receive all further correspondence on this RFP.

This Notice should be returned via email to ltcsurv@health.state.ny.us or by mail to:

Cherlyn B. Fay/Stephanie Heverly
Office of Primary Care Health Systems Management
875 Central Avenue
Albany, NY 12260

PROSPECTIVE BIDDER'S INFORMATION

Organization Name: _____

Organization Address: _____

Street/PO Box _____

City _____ State _____ Zip Code _____

Telephone (____) _____ FAX (____) _____

E-Mail Address _____

Authorized Signature _____

Print Name _____

Date _____

Expected Bid Components (Check all that apply):

- ☐ Adult Care Facilities
- ☐ Licensed Home Care Services Agencies
- ☐ Nursing Homes
- ☐ Intermediate Care Facilities

ATTACHMENT C

TRANSMITTAL FORM

***Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies,
Nursing Homes and Intermediate Care Facilities***

RFP #15365

Bidder Full Corporate Name: _____

Corporate Address: _____

FEIN: _____ DUNS Number: _____ NYS Vendor ID: _____

Type of Legal Business Entity: _____

Charities Registration Number, if Not-for-Profit: _____

Contact Person Information:

Name: _____

Title: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

PROPOSAL INCLUDES BIDS FOR THE FOLLOWING (CHECK ALL THAT APPLY):

- ☐ Component A: Adult Care Facilities
- ☐ Component B: Licensed Home Care Services Agencies
- ☐ Component C: Nursing Homes
- ☐ Component D: Intermediate Care Facilities for Individuals with Intellectual Disabilities

Attestations (Circle YES or NO for **EACH** attestation):

I certify that the bidder has at least three years' experience in providing staffing for, or conducting, surveillance activities in one or more of the components in the RFP. **YES NO**

I certify that for any component awarded, the above named bidder agrees to undertake the activities required for all units within the component(s). **YES NO**

I certify that the above named bidder accepts the contract terms and conditions contained in this Request for Proposals (RFP), including any exhibits and attachments, and has received and acknowledges all Department amendments to the RFP. **YES NO**

I certify that the above named bidder is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department. **YES NO**

I certify that the bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii)

acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department. **YES** **NO**

I certify that the technical and cost proposals of the bidder will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals. **YES** **NO**

Use of Subcontractors (check only one):

- ☐ I certify that the proposal submitted by the above named bidder proposes to utilize the services of a subcontractor(s) for one or more component. Attached to this Transmittal Form is a list of subcontractors and a subcontractor summary for each. The summary document for each includes the information detailed in Section IV.B.1.g.
- ☐ I certify that the proposal submitted by the above named bidder does not propose to utilize the services of any subcontractor for any component.

Conflict of Interest Attestation (check only one):

- ☐ I certify that there are business, financial or beneficial relationships and/or interests for the above named bidder as defined in the State Operations Manual Section 7202 (<http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107c07.pdf>). In cases where such a relationship(s) and/or interest(s) exists, the Bidder should (i) describe how an actual or potential conflict of interest and/or disclosure of confidential information relating to an award under this RFP will be avoided, and (ii) state that the Bidder guarantees knowledge and full compliance with the New York State Public Officers' Law, as amended, including but not limited, to Sections 73 and 74, with regard to ethical standards applicable to State employees; OR
- ☐ I certify that no conflict of interest relationship exists for the above named bidder.

To comply with the Vendor Responsibility Requirements outlined in RFP Section V.J., I hereby certify (**check only 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 Individual Authorized to Bind the Above Named Organization Into a Contract with NYS:

Signature Date

Print Name: _____

Title: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

ATTACHMENT D

PRICE PROPOSAL FORMS

D-1 through D-4

***Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies,
Nursing Homes and Intermediate Care Facilities***

RFP #15365

ATTACHMENT D-1

PRICE PROPOSAL FORM

COMPONENT A: ADULT CARE FACILITIES

UNIT NAME	PRICE PER UNIT
Unit A1: Pre-Opening Survey	\$ _____
Unit A2: Complete Inspection	\$ _____
Unit A3: Partial Inspection	\$ _____
Unit A4: Follow-Up Inspection	\$ _____
Unit A5: Complaint Investigation	\$ _____
Unit A6: Questionable Operations Investigation	\$ _____
Unit A7: Death Investigation	\$ _____
Unit A8: Facility Closure and Emergency Evacuation Monitoring	\$ _____

Notes:

Bidders **MUST** provide a bid price for ALL units. Proposals failing to provide prices for all units will be considered non-responsive.

“Review/Survey/Investigation” includes all deliverables as described in Sections III.A. and III.B.

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

Signature

Date

Printed Name and Title

***Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies,
Nursing Homes and Intermediate Care Facilities***

RFP #15365

ATTACHMENT D-2

PRICE PROPOSAL FORM

COMPONENT B: LICENSED HOME CARE SERVICES AGENCIES

UNIT NAME	PRICE PER UNIT
Unit B1: Policies and Procedures Manual Review	\$ _____
Unit B2: Pre-Opening Survey	\$ _____
Unit B3: Re-Licensure Survey	\$ _____

Notes:

Bidders **MUST** provide a bid price for ALL units. Proposals failing to provide prices for all units will be considered non-responsive.

“Review/Survey/Investigation” includes all deliverables as described in Sections III.A. and III.B.

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

Signature

Date

Printed Name and Title

***Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies,
Nursing Homes and Intermediate Care Facilities***

RFP #15365

ATTACHMENT D-3

PRICE PROPOSAL FORM

COMPONENT C: NURSING HOMES

UNIT NAME	PRICE PER UNIT
Unit C1: Federal Health, Off-Hours, Extended Survey and Revisit – Health	\$ _____
Unit C2: Onsite Investigations of ACTS Case(s)	\$ _____
Unit C3: Off-Site Investigation of ACTS Case Intake	\$ _____
Unit C4: Annual ADHCP Survey	\$ _____

Notes:

Bidders MUST provide a bid price for ALL units. Proposals failing to provide prices for all units will be considered non-responsive.

“Review/Survey/Investigation” includes all deliverables as described in Sections III.A. and III.B.

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

Signature

Date

Printed Name and Title

***Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies,
Nursing Homes and Intermediate Care Facilities***

RFP #15365

ATTACHMENT D-4

PRICE PROPOSAL FORM

**COMPONENT D: INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL
DISABILITIES**

UNIT NAME	PRICE PER UNIT
Unit D1: Full/Fundamental Survey Developmental Center (DC) DC – Small Residential Unit Adverse Action	\$ _____
Unit D2: Revisit – Health	\$ _____
Unit D3: Onsite Complaint Investigation	\$ _____
Unit D4: Certification Review	\$ _____
Unit D5: State Oversight and Supervision Survey	\$ _____

Notes:

Bidders MUST provide a bid price for ALL units. Proposals failing to provide prices for all units will be considered non-responsive.

“Review/Survey/Investigation” includes all deliverables as described in Sections III.A. and III.B.

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

Signature

Date

Printed Name and Title

ATTACHMENT E
NEW YORK STATE
DEPARTMENT OF HEALTH
LOBBYING FORM

PROCUREMENT TITLE: Surveillance and Investigation Activities for: Adult Care Facilities, Licensed Home
Care Services Agencies, Nursing Homes and Intermediate Care Facilities
RFP #15365

Bidder Name: _____

Bidder Address: _____

Bidder NYS Vendor ID No: _____

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

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

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

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):
No Yes

If yes, please answer questions 1.a through 1.c. If no, proceed to question 2.a:

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
No Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):
No Yes

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

Governmental Entity: _____
Date of Finding of Non-responsibility: _____
Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):
No Yes

2b. If yes, please provide details below.

Governmental Entity: _____
Date of Termination or Withholding of Contract: _____
Basis of Termination or Withholding: _____

(Add Additional Pages as Necessary)

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

_____ (Officer Signature)	_____ (Date)
_____ (Officer Title)	_____ (Telephone)
_____ (e-mail Address)	

Attachment F

MWBE Procurement Forms

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

Submitted with Bid:

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

M/WBE Form#2: M/WBE Waiver Request, if applicable

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

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

Submitted by Successful Bidder Only:

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

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

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

BIDDER/CONTRACTOR M/WBE UTILIZATION PLAN

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title: Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies, Nursing Homes and Intermediate Care Facilities	RFP/Contract No. 15365

Description of Plan to Meet M/WBE Goals

PROJECTED M/WBE USAGE

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

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

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

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

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

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

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

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

M/WBE UTILIZATION WAIVER REQUEST

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title: Surveillance and Investigation Activities for Adult Care Facilities, Licensed Home Care Services Agencies, Nursing Homes and Intermediate Care Facilities	RFP/Contract No. 15365

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

Include attachments below to evidence good faith efforts:

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

Section 4: Signature and Contact Information

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

Submitted by : _____ Title: _____

Signature

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

Contractor Name:	
Contract Title:	Contract No.

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

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

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

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

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

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

Submitted by : _____ Title: _____

 Signature

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

Check applicable categories: ☐ Project Staff ☐ Consultants
 ☐ Subcontractors

Contractor Name _____

Address _____

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

 (Name and Title)

 (Signature)

 Date

- M/WBE Form #5 -
**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

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

M/WBE

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

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

EEO

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

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

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

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

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

Name & Title

Signature & Date

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

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

Check applicable categories: ☐ Project Staff ☐ Consultants
 ☐ Subcontractors

Contractor Name _____ Contract # _____

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

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

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

 (Name and Title)

 (Signature)

 Date

Attachment G

Sample Standard NYS Contract Language and Appendices

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):

Department of Health
Corning Tower
Albany, NY 12237

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE: 3450000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:

TO:

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

FUNDING AMOUNT FOR CONTRACT
TERM:

NYS VENDOR ID NUMBER:

MUNICIPALITY NO. (if applicable)

STATUS:

CONTRACTOR IS () IS NOT () A
SECTARIAN ENTITY

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

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

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

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

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

Contract No.:

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

CONTRACTOR

STATE AGENCY

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

State Agency Certification:

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

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

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

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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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, licensor, licensee, lessor, lessee or any other party):

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

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

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

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

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

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and

copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition,

replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any

such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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

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

GLBU: DOH01
APPENDIX X

Contract Number: _____

Contractor: _____

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:

\$ _____
(Value before amendment)

From ____/____/____ to ____/____/____.
(Initial start date)

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

\$ _____

From ____/____/____ to ____/____/____.

This will result in new contract terms of:

\$ _____
(All years thus far combined)

From ____/____/____ to ____/____/____.
(Initial start date) (Amendment end date)

Signature Page for:

Contract Number: _____

Contractor: _____

Amendment Number: X- _____

BSC Unit ID: 345<XXXX> _____

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

CONTRACTOR SIGNATURE:

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

STATE OF NEW YORK)
) 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: _____

STATE OF NEW YORK
AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to one of the STATE's designated payment office in order to receive payment, as follows:
 - 3. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: DOHaccountspayable@ogs.ny.gov with a subject field as follows:
Subject: <<Unit ID: 3450467>> <<Contract #>>

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

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

**NYS Department of Health
Unit ID 3450467
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 and Section V.E of the Request for Proposals as included in Contract Appendix B.

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

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

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

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

III. Term of Contract

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

expenses made after receipt of the notification of termination.

- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

IV. Proof of Coverage

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

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

V. Indemnification

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

APPENDIX D
GENERAL SPECIFICATIONS

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

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

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

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

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

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

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

2. Date/Time Warranty Statement

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

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

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

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

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

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

T. **Provisions Upon Default**

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

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

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

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

W. **Contract Insurance Requirements**

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

time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.

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

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

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

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

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
 - f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
 - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
 - h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
 - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Y. Confidentiality Clauses

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

the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.

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

Z. Provision Related to Consultant Disclosure Legislation

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

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

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

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

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

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

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

5. Contact procedures for Covered Program to ask questions or learn additional information.
- E. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Program agrees to the same restrictions and conditions that apply through this AGREEMENT to Business Associate with respect to such information.
- F. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
- G. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
- H. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- I. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- J. Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
- K. Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.
- III. Permitted Uses and Disclosures by Business Associate
 - A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
 - B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
 - C. Business Associate may disclose Protected Health Information as Required By Law.
- IV. Term and Termination

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

V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT.

Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

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

Appendix G

NOTICES

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

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

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

State of New York Department of Health

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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

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

APPENDIX M

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

I. General Provisions

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

II. Contract Goals

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor

should reference the directory of New York State Certified MBWEs found at the following internet address:

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

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

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

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Contractor’s EEO policy statement shall include the following language:

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

C. Form #4 - Staffing Plan

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

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

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor

performing work on the Contract.

3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

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

V. Waivers

- A. For Waiver Requests Contractor should use Form #2 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

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

VII. Liquidated Damages - MWBE Participation

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