

**NEW YORK STATE DEPARTMENT OF HEALTH**

**A Request for Proposal for**

**Office of Long Term Care  
Division of Home and Community-Based Services  
Bureau of Medicaid Waivers  
Traumatic Brain Injury Program**

RFP No.0912291016

**Housing Payment Services for Traumatic Brain  
Injury Waiver Participants**

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Schedule of Key Events

RFP Release Date	March 1, 2010
Written Questions Due	April 13, 2010
Letter of Interest Due (optional)	March 22, 2010
Response to Written Questions	April 30, 2010
Proposal Due Date	May 21, 2010

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

### **DESIGNATED CONTACTS:**

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

Jonathan Mahar  
Grants & Procurement Unit  
NYS Department of Health  
Room 1341, Corning Tower, Empire State Plaza  
Phone: 518-474-7896 Fax 474-8375  
[jpm12@health.state.ny.us](mailto:jpm12@health.state.ny.us)

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

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

RFP Release Date:

Brenda Rossman  
Bureau of Medicaid Waivers,  
Office of Long Term Care  
NYS Department of Health  
1 Commerce Plaza, Room 826  
Albany, NY, 12210  
[tbi@health.state.ny.us](mailto:tbi@health.state.ny.us)

Submission of written proposals or bids:

Charlotte Mason  
Bureau of Medicaid Waivers,  
Office of Long Term Care  
NYS Department of Health  
1 Commerce Plaza, Room 826  
Albany, NY, 12210  
[tbi@health.state.ny.us](mailto:tbi@health.state.ny.us)

Submission of Written Questions:

Brenda Rossman  
Bureau of Medicaid Waivers,  
Office of Long Term Care  
NYS Department of Health  
1 Commerce Plaza, Room 826  
Albany, NY, 12210  
[tbi@health.state.ny.us](mailto:tbi@health.state.ny.us)

Debriefings:

Charlotte Mason  
Bureau of Medicaid Waivers,  
Office of Long Term Care  
NYS Department of Health  
1 Commerce Plaza, Room 826  
Albany, NY, 12210  
tbi@health.state.ny.us

Negotiation of Contract Terms after Award:

Lydia J. Kosinski  
Bureau of Medicaid Waivers,  
Office of Long Term Care  
NYS Department of Health  
1 Commerce Plaza, Room 826  
Albany, NY, 12210  
tbi@health.state.ny.us

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

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## A. INTRODUCTION

The Department of Health (DOH or “the Department”) is responsible for administration of the Home and Community Based Services Medicaid Waiver for Individuals with Traumatic Brain Injury (HCBS/TBI). Participants in the waiver who demonstrate a financial need are eligible to apply for monthly rental and utility subsidies and one time payments for housing supports.

The purpose of this Request for Proposal (RFP) is to identify a contractor (Payment Agent) to manage the housing subsidy payment process for TBI Housing for a five year period beginning October 1, 2010. This date is subject to change .

## B. BACKGROUND

Article 27-CC of the Public Health Law, establishes the New York State (NYS) TBI Program within DOH. This legislation charged the Department

“to develop a comprehensive statewide program ... with primary emphasis on community based services and to develop outreach services and to utilize existing organizations with demonstrated interest and expertise in service to persons with traumatic brain injuries and shall, within funds available, enter into contracts with such organizations.”

Accordingly, since 1995-96, DOH has administered a federal 1915(c) HCBS Waiver for Medicaid eligible individuals with TBI funded under the State Medicaid Assistance (MA) program with federal/State/local matching support. From that time, the TBI Housing Program has provided rental subsidies and housing supports to HCBS/TBI waiver participants based on need for safe and secure housing, financial aid for housing and utility expenses and necessary funds for furniture, moving expenses and security deposits.

Without the support of the TBI Housing Program, many individuals would be unable to access the waiver program because of their inability to obtain adequate and affordable housing in the community. Currently there are approximately 1,700 TBI waiver participants enrolled in the TBI Housing Program, requiring over 2,300 payments—totaling over \$700,000 each month—for rental and utility subsidies. Additional requests for rental security deposits and housing supports are paid annually.

Applications for rental subsidy and housing supports are generated through the nine Regional Resource Development Center (RRDC) contractors that administer the TBI waiver statewide. The RRDC approves all subsidy applications, and forwards a request for payment to the contracted Payment Agent.

The Payment Agent will be responsible for:

- Processing and tracking all monthly rental, utility, and housing support (basic furniture, other household items, and moving expense) payments to landlords, utility companies, and other payees including: periodic, one-time, and emergency payments as required;
- Submitting routine expenditure and budget reports to DOH as required and otherwise upon request;
- Receiving approximately 200 new applications each month;
- Mailing approximately 2,300 individual rental and utility payments each month; and
- Processing approximately 1,700 one-time payments and housing support payments.

<b>RRDC</b>	<b>Approximate Current Number of TBI Housing Subsidy Recipients by Region (as of September 2009)</b>
Adirondack	100
Capital	200
Binghamton	100
Buffalo	200
Lower Hudson	200
Long Island	150
NYC	300
Rochester	350
Syracuse	100

C. DETAILED SPECIFICATIONS

The contractor shall:

- Receive approved subsidy applications and Change of Status forms from the nine (9) RRDC contractors statewide or from DOH. (Currently, this workload amounts to approximately 200 forms per month.)
- Establish, within five calendar days of receipt, pertinent data related to all approved initial applications in a database format approved by DOH and input Change of Status forms within two business days of receipt.
- Convey funds, based upon authorization received electronically and/or on paper from an RRDC. No verbal payment authorizations will be allowed.

DOH will review transmittals, regional housing budgets and complete internal audits to ensure oversight of expenditures.

- Make routine one-time payments (e.g. security deposits, broker fees) within five calendar days of receipt of an approved application and/or transmittal request from an RRDC.
- Process urgent payments upon request. Unless otherwise specified by the RRDC in the transmittal request, checks/payments must be generated the same day for requests received by noon, and generated by noon the next day for requests received after noon. Urgent payments may require priority mailing.
- Use mail, fax, scan, and/or other electronic means authorized by DOH, to convey necessary information to new landlords, and notices regarding security deposit or broker fees, changes, overpayments or refunds related to the TBI Housing Program, as necessary, utilizing standardized letters approved by DOH.
- Maintain a sufficient payment infrastructure to support both electronic and paper transactions. Transactions will be completed via the method that best accommodates the need of the landlord and payment recipients.
- Maintain a tracking system, as required by the Payment Agent's internal controls and by data specifications determined by DOH, detailing payments and reimbursements. This information will be conveyed to DOH as requested.
- Maintain complete contemporaneous records of subsidy payment requests and Change of Status forms, in accordance with data specifications determined by DOH.
- Maintain internal controls consistent with generally approved accounting practices.
- Establish and maintain a records retention schedule consistent with DOH requirements.
- Submit, in a format approved by DOH, monthly, quarterly and annual reports of all activity related to the TBI Housing Program. Submit interim reports upon request by DOH.
- Communicate, as needed, with DOH and RRDC contractors with regard to the correction of discrepancies, overpayments, and other problems in order that payments may be made within designated time frames.

- Meet with DOH, in person or by telephone conference, to refine the application/processing system and review any changes in policy or procedures which may affect the Payment Agent. These meetings will be held at least quarterly, but may be held more frequently, upon the request of DOH or the Payment Agent.
- Participate in Regional/Statewide conference calls as requested by DOH.
- Maintain adequate staff to perform the activities described herein, including a designated project manager and sufficient supervisory and support staff.
- Provide initial training to appropriate contractor employees and RRDC staff in the procedural areas for which the contractor will be responsible under the terms of the contract. The contractor is expected to provide subsequent training as needed to address staff turnover or changes in program requirements. All material developed by the contractor must be reviewed and approved by DOH. Training for contractor staff will include, but is not limited to, these issues:
  - Applicable TBI Housing Program policies and procedures;
  - Use of documents for the administration of the TBI Housing Program;
  - Principles and requirements of the Americans with Disabilities Act and Fair Housing standards;
  - Cultural sensitivity to the populations served as related to the need for required housing and payment supports; and
  - Confidentiality under MA and Health Insurance Portability and Accountability Act (HIPAA) requirements, with the recognition that confidential information and data may be discussed and available to staff.
- Train RRDC staff as needed in the contractor's procedures in order to facilitate prompt payments, required documentation, and appropriate interactions with contractor's staff.

## D. PROPOSAL REQUIREMENTS

### 1. Eligibility

Eligible Bidders may be a not-for-profit or a for-profit organization and must be authorized to do business and available to provide services in New York State.

## 2. Minimum Qualifications

The selected contractor must have at least three (3) years of experience providing timely and accurate payment processing services on a statewide basis, including processing both routine and urgent applications for payment, maintaining accurate and complete records, and developing reports of expenditures. The selected contractor must have the ability to electronically transfer information and reports and use computer software compatible with the products and systems used by DOH.

## 3. Preferred Qualifications

The selected contractor should have experience related to a housing program for individuals with disabilities; e.g. housing choices affected by physical or cognitive limitations, and the necessity for rapid or flexible payment timeframes.

The selected contractor should have an established line of credit , no less than \$1.5 million, or alternative financial resource sufficient to support timely payments to creditors in the event of a need to bridge potential delays in DOH voucher processing and reimbursement.

## 4. Technical Component

The contractor will be selected based on a submitted proposal demonstrating the ability to perform the tasks detailed in the specifications and Attachments to this RFP. Proposals shall be divided into three parts: The Technical Component, The Cost Component, and Supporting Documentation.

The documents required in each Component of the proposal are listed in Attachment 17 below. Bidders should place the documents required for each Component in binders with tabs identifying each by number and name. The Supporting Documentation may be included in the same binder with the Technical Component, following the documents required for the Technical Component.

**Bidders must not include any materials required by the Technical Component or the Supporting Documentation in the Cost Component. Bidders must not include any materials required by the Cost Component in the Technical Component or the Supporting Documentation. Including cost information in the Technical Component will result in a disqualification of the proposal.**

The Technical Component contains the Bidder's background, capability and experience and all of the information and plans for how the Bidder will implement the project. The Cost Component contains the bid documents and other financial documents related to the price and cost of the proposal. The

Supporting Documentation includes all other documents required by the Department and any additional information or documentation the Bidder wishes to supply as part of its proposal.

Specifically, the Technical Component consists of the following sections.

1. Transmittal Letter

The Transmittal Letter must include the name of a person who should be contacted by DOH with questions about the proposal or a proposed contract. The transmittal letter must contain all of the listed information and must be submitted with each proposal. Failure to submit a Transmittal Letter with a proposal will result in the proposal being disqualified from consideration.

A form is provided (Attachment 18) that will serve as the Transmittal Letter. This form or a reasonable facsimile may be used.

2. Table of Contents

The Table of Contents should identify by name and page number the location of all sections of the application including attachments. Each main table of contents entry should correspond with a tabbed section of your proposal. If you include additional attachments to any section, please add a tab to identify the location of the attachments. See Part E.2. of this RFP for further details about the organization of the proposal. **Bidders that organize and format their proposals in the manner requested in this RFP will receive points in the scoring of the proposals.**

3. Project Narrative – General Section

The project narrative has eight parts, each of which should be identified by a separate tab in the binder with the number and name of the section. The detailed specifications for this RFP are in Part C and should be taken into consideration in developing the narratives. The General Section will be scored for relevance to DOH needs, experience and the quality of the response. The narrative should not exceed 20 pages, not inclusive of attachments. **[Note: Pages in excess of 20 will not be scored.]**

4. Mandatory Qualifications

The selected contractor must have at least three (3) years of experience providing timely and accurate payment processing services on a statewide basis, including processing both routine and urgent applications for payment, maintaining accurate and complete records, and developing reports of expenditures. Proposals from Bidders, with less than three (3) years experience will be found deficient and will be disqualified from further consideration.

5. Preferred Qualifications  
Describe in detail any experience which meets the preferred qualifications, including the time frames over which such experience was gained. Bidders will be assessed on the extent and quality of their experience. Bidders should submit documentation assuring their available line of credit or alternative financial resource and assets and confirming their ability to make timely payments to creditors, notwithstanding delays in DOH voucher processing and reimbursement.
6. Organization Mission  
Describe your organization, its mission, services and capacity. Explain how acting as Payment Agent for the TBI Housing Program fits into your organization's overall mission. Those bidders for which a potential conflict of interest exists, or may be perceived to exist, must provide narrative detail regarding conflict or perceived conflict and policies to be employed and steps to be taken to negate such a conflict. If you do not believe your organization would have any conflict of interest by acting as Payment Agent for the TBI Housing Program, provide a narrative explanation for such belief. This narrative requirement is in addition to the bidder's need to complete Attachment 19 (Conflict of Interest.)
7. Staffing  
Provide an organization chart which delineates the reporting component of the Payment Agent and the point of contact for DOH and the RRDC contractors.
8. Training  
Submit a plan for managing training activities. This plan should identify training that will be needed by contractor staff and training for any RRDC staff that will need to interface with the contractor.
9. Workplan  
Bidders should submit a section describing how required program activities will be accomplished and the timeframes for program implementation and operation. (See instructions Att. 16.1 and format Att. 16.2.) This submission should delineate key activities by (1) initial program implementation, and (2) on-going operations.

The workplan and timeline should include, at the minimum:

- Establishment of internal systems, including routine payment, urgent payment and reporting; and
- Performance of core functions necessary to comply with contract requirements, including communication and training.

## 5. Cost Component

The cost component contains the price proposal for the contract. The DOH will use a best value method of contracting for the Payment Agent services. In a best value procurement, the basis for awarding the contract is the Bidder that optimizes quality, cost, and efficiency among responsive and responsible Bidders. Under a best value procurement, while price is an important consideration in the selection of a contractor; the award will not necessarily be made to the Bidder with the lowest price.

The Payment Agent may be requested to attend quarterly RRDC meetings in Albany, and other meetings could be requested by DOH at any RRDC location. All costs for travel are to be borne by the contractor, are considered part of the cost of doing business and will not be separately reimbursed.

The Cost Component includes two (2) separate sections,

1. Bid Form – Attachment 1  
The bid form represents the Bidder's commitment to a contract price and includes questions on prior non-responsibility, procurement terminations or withholds of the Bidder and certifies that all information is complete and accurate.

2. Other Required Cost Component Forms

### Minority / Women's Business Enterprises Forms (M/WBE)

The M/WBE Forms included in Attachment 14 must be completed and a plan for how the Bidder intends to include minority and women's business enterprises into the contract must be explained in a narrative. If the Bidder does not intend to use these services, the narrative must include a justification that explains the Bidder's rationale. Failure to complete and submit the M/WBE forms and narratives in the proposal will result in the proposal being disqualified. N/A or zero may be indicated on the form, but all forms must be completed.

### Consultant Services Form A

Consultant Services Form A is included as Attachment 11 to this RFP. Please complete it and return it as part of the Cost Proposal. Do not include this form in the Technical Proposal or supporting documentation, as this will result in a disqualification of the proposal.

## 6. Supporting Documentation

Supporting documentation should be separated from the Technical and Cost Components. If the Bidder includes additional documentation, it must identify it in the narrative by name and tab number.

1. **Independently Audited Financial Statements**  
The Department requires audited financial statements in order to conduct its review of the Bidder's financial stability and ability to perform a contract under this RFP. Include a complete copy of the Bidder's independently audited financial statements or Dunn and Bradstreet Business Information Reports for the last three years (calendar years 2006, 2007 and 2008, or fiscal years ending during those years, as applicable). Do not include this information in the Technical or Cost Components.

If not included as part of the independently audited annual financial statements, include in this section, full disclosure of all significant litigation affecting the Bidder, whether as defendant or plaintiff, the status of any pending litigation, and the outcome of any litigation concluded within the same three-year period.

If the Bidder proposes to subcontract any portion of the work required under the contract, and the proposed sub-Contractor will be paid more than 25 percent of the bid price, include the same financial information for each such proposed Sub-contractor as is required in this section for the Bidder, as well as a Letter of Intent from the subcontractor, on the subcontractor's letterhead, indicating the subcontractor's willingness to engage in the work of the RFP. Include the **percentage**, not the dollar value, of the total contract which will be performed by each proposed sub-Contractor. Do not include any other bid information with the proposed Sub-contractors' financial information. Inclusion of bid information other than the percentage of effort to be performed by a proposed sub-Contractor may result in disqualification of the Proposal.

2. **Vendor Responsibility Attestation**  
Each Bidder must complete the appropriate vendor responsibility questionnaire (See Section F-8) and complete and submit with its proposal the Vendor Responsibility Attestation, Attachment 13. For this RFP, sub-contractors must be approved by DOH, comply with M/WBE requirements, and submit a Vendor Responsibility questionnaire.
3. **Sales Tax Forms**  
Include the sales tax forms required to be submitted by this RFP, in the Supporting Documents section of the proposal (see Attachments 9 and 10).

#### E. METHOD OF AWARD

At the discretion of the Department, all bids may be rejected. Proposals meeting the guidelines set forth above will be reviewed and evaluated competitively by the Department of Health. Important considerations in the review process will be:

- The extent to which the requirements of the RFP have been fully addressed;
- The Bidder's ability to provide efficient, timely, cost effective administration of services;
- The Bidder's capability to achieve accuracy and completeness of payment verification and reconciliation;
- The Bidder's demonstrated experience in providing payment services;
- The Bidder's ability to provide an available line of credit or alternative financial resource to meet payment obligations should lags in State payment occur;
- The Bidder's demonstrated understanding of housing needs for persons with cognitive and physical disabilities; and
- The Bidder's demonstrated ability to meet intermittent demands for flexible and rapid payment processing timeframes.

After consideration of the following specific standards, the Technical and Cost Components will be weighted according to one or more formulae noted below. (See Sections E-3, E-4, E-5 below)

All bids must contain two separate Components: the Technical Component (80 percent of total score), and the Cost Component (20 percent of total score), as well as the Supporting Documentation.

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

#### **1. Preliminary Review (Pass/Fail Criteria)**

The proposal must meet and pass various criteria. If any of the following apply, the Proposal is considered incomplete and will not be scored. The Proposal:

- Is not submitted by the time and date required by the RFP on the schedule of events on page 1;

- Does not contain separate Technical Component and Cost Components;
- Does not contain signed Bidder's Assurances (Attachment 15), including the narrative support for **(A)** assurance 5, by providing a copy of current policies and procedures related to confidentiality of personally identifiable data and information or records pertaining to patient care including compliance with all pertinent Health Insurance Portability and Accountability Act (HIPAA) requirements, Article 27-F of the Public Health Law, and the privacy and confidentiality requirements of the Medicaid program; and **(B)** assurance 6, by providing either by providing a certificate of insurance for existing general liability coverage or an insurance binder showing the availability of general liability coverage for at least \$5,000,000.
- Does not include a completed and signed Transmittal Letter;
- Does not include a completed and signed Bid Form.

Proposals passing the initial pass/fail criteria screen will be evaluated for technical content and ranked for qualifications and cost, according to the technical and cost criteria.

## 2. Proposal Formatting Requirements

Bidders who comply with all of the formatting requirements of this section and technical requirements related to the submission of the proposal will be awarded "formatting" points in the evaluation of the proposal. Bidders who do not comply with the formatting and technical submission requirements will not receive "formatting" points.

Formatting and submission requirements for bids are as follows: **one (1)** original bound signed proposal, **one (1)** unbound copy, **Five (5)** bound copies and **one (1)** CD set with files in .pdf format.

**Submit Proposals in sealed boxes or envelopes, clearly marked on the outside with the name of the Bidder, the title and number of the procurement as stated on the first page of this RFP and notation whether the package contains the "Technical/Program Component" or the "Cost Component".**

- Prepare Proposals on letter size (8.5 x 11) white paper;
- Submit Technical/Program Component in a three ring binder;
- Organize the Technical/Program Component with tab dividers identifying each section;

- Clearly number pages of the Technical/Program Component, with each section consecutively numbered and identified in the Table of Contents; a separate Table of Contents may be used for the Supporting Documents;
- The Supporting Documents may be submitted in the same binder as the Technical/Program Component or in a separate binder;
- Submit the Cost Component either in a binder or stapled or otherwise fastened together; with the following sections: Bid Form (Attachment 1) or No Bid Form (Attachment 2), Minority / Women’s Business Enterprises Forms (Attachment 14) and Consultant Services Form A, (Attachment 11). Do not include any of these forms in the Technical/Program Component.
- Do not include any materials required by the Technical/Program component in the cost component. Bidders must not include any materials required by the cost component in the technical component. Including cost information in the technical component will result in a disqualification of the proposal.

### **3. Technical/Program Component Narrative**

In completing this section, the bidder should include information explaining how it will implement each of the Detailed Specifications of Part C of this RFP, as well as the other requirements of Part D. Please be specific when responding. Ambiguities and general statements will not be interpreted in favor of the bidder.

- Describe your organization, its mission, services and capacity;
- Describe your organization’s experience with providing payment processing services and what best qualifies you to offer payment processing services on a statewide basis;
- Describe what best qualifies your organization to establish a statewide payment processing and reporting system for the TBI Housing Program, and explain how this proposal supports the mission of your organization;
- Describe your organization’s capacity for training staff, TBI waiver managers, and service coordinators;
- Describe your organization’s experience with the operational issues involved in public sector funded programs, including your organization’s experience with the payment logic within complex MA and TBI waiver eligibility requirements;

- Describe your organization’s experience related to housing programs or other services to individuals with disabilities, e.g., housing choices affected by physical or cognitive limitations, and the necessity for rapid or flexible payment timeframes;
- Describe your organizational mechanisms that will support the need for flexible and rapid emergency payments as necessary to meet the needs of the TBI waiver participants; and
- Describe your organization’s financial infrastructure, including the ability to make timely payments to creditors, and established line of credit or alternative financial resource sufficient to meet the purpose of this RFP of at least \$1.5 million.

### **Technical/Program Component Scoring**

The Bidder receiving the highest technical score will receive eighty (80) points. The remaining bids will then be normalized against the highest scored proposal based on a formula weighing the relative ranking of the technical score.

The normalized Technical/Program Score will be calculated as  $T = (A/B) * C$  [(A divided by B)] times C) where:

**T** is the normalized Technical/Program Score of this proposal;  
**A** is the raw score of proposal being scored  
**B** is the raw score of highest scoring proposal, and  
**C** is the technical points available.

For example, if Proposal X has a raw technical score of 70 and the highest raw technical score for the proposal is 75,  $T = 74.6$  [ $T = (70/75) * 80$ ].

#### **4. Cost Component Scoring**

The Bidder with the lowest cost will receive twenty (20) points. The remaining bids will then be normalized against the lowest cost proposal received based on a formula weighing the relative ranking of the cost score.

The normalized Cost Score will be calculated as  $T = (A/B) * C$  [(A divided by B)] times C) where:

**T** is the normalized Cost Score of this proposal;  
**A** is Total Price of lowest price cost proposal  
**B** is Total Price of cost proposal being scored, and  
**C** is cost points available.

For example, if Proposal X has a raw cost score of \$15,000 and the lowest raw cost score for the proposal is \$12,000  $T=16$  [ $T=(12,000/15,000)*20$ ].

## 5. Proposal Scoring (Technical/Program and Cost)

There is a maximum achievable total score of 100 [maximum Technical Component score (80) plus maximum Cost Component score (20)]. The scores will be ranked in order of total combined scores, highest to lowest. The highest scoring proposal will undergo Vendor Stability, Vendor Responsibility and Reference reviews. If the Bidder passes all of these reviews, the bidder will be awarded the contract. If the Bidder does not pass all of these reviews, the next highest ranked Bidder will be reviewed. This process will be continued until a Bidder passes all levels of review or the scored bidder pool is exhausted.

If the State is unsuccessful in negotiating a contract with a selected Bidder within an acceptable time frame, the State may begin contract negotiations with the next qualified Bidder(s) in order to serve and realize the best interests of the State.

## F. ADMINISTRATIVE

### 1. Issuing Agency

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

### 2. Inquiries

Any questions concerning this solicitation must be directed to:

Brenda Rossman  
New York State Department of Health  
Traumatic Brain Injury Waiver  
Office of Long Term Care  
One Commerce Plaza  
99 Washington Avenue Suite 826  
Albany, New York 12260

Bidders wishing to submit questions concerning the RFP must do so in writing, submitted either by mail to the above address, or by email to the email address listed above. Responses will be posted only to those questions received by April 13, 2010.

Questions and answers will be posted on the Department of Health's website at <http://www.nyhealth.gov/funding/> by April 30, 2010. RFP updates and/or

modifications will also be posted as required. Bidders wishing to receive these documents via mail must send a request, in writing, to the Department at the address above.

3. Submission of Proposals

Interested vendors should submit **One (1)** original bound signed proposal, **One (1)** unbound copy **Five (5)** bound copies and **One (1)** set of CDs with files in .pdf format not later than 4:00pm May 21, 2010.

The cost and technical proposals must be in separate, labeled envelopes. They should be submitted in a third envelope to avoid separation in the mail.

Responses to this solicitation should be clearly marked with the name and number of the RFP as appears on the front page, and directed to:

New York State Department of Health  
Bureau of Medicaid Waivers  
Traumatic Brain Injury Waiver  
Office of Long Term Care  
One Commerce Plaza  
99 Washington Avenue Suite 826  
Albany, New York 12260

Attention: Charlotte Mason

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

- a The Bid Form must be filled out in its entirety.
- b The responsible corporate officer for contract negotiation must be listed
- c This document must be signed by the responsible corporate officer.
- d All evidence and documentation requested under Section D, Proposal Requirements should be provided in accordance with instructions provided in this RFP at the time the proposal is submitted.

4. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

- a. Reject any or all proposals received in response to the RFP;
- b. Withdraw the RFP at any time, at the agency's sole discretion;

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

## 5. Payment

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

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or

by telephone at 518-474-4032. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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

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

Payment terms will be:

The contractor shall submit two invoices each month (preliminary/actual expenditures) and required expenditure reports. The first voucher of the month projects the expenditures and the second voucher reconciles the expenses to the reimbursement. A monthly report and fiscal report is provided with the reimbursement request.

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

Contractors are responsible for submitting correctly prepared vouchers for payment. DOH reserves the right to request additional documentation.

#### 6. Term of Contract

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

The contract is for a five year period beginning October 1, 2010. This date is subject to change.

Contract pricing will be based on the first year of the contract. At the sole discretion of DOH, a price increase for a subsequent year of the contract may be awarded. Such increase will be calculated based upon the percentage increase in the U.S. Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, All Items, not seasonally adjusted, Base Period 1982-84=100. The CPI reference period for any increase in the contract price will be the 12 month period ending four months prior to the month in which the contract is subject to renewal. In addition,

increases in the contract base are not obligatory and are subject to available enacted New York State appropriated funds.

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

7. Debriefing

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

8. Protest Procedures

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

9. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment 13).

10. State Consultant Services Reporting

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

The 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.

Both of these forms are included as attachments to this document. (See Attachments 11 and 12)

#### 11. Lobbying Statute

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

- a. Makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. Requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. Requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. Authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. Directs the Office of General Services to disclose and maintain a list of non-responsible Bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. Requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. Expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. Modifies the governance of the New York State Commission on Public Integrity
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;

- j. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. Establishes the Advisory Council on Procurement Lobbying.

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

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

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

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

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

13. Information Security Breach and Notification Act

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

14. New York State Tax Law Section 5-a

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

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

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. 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. (See Attachment 9)

Contractor must complete and submit to the Department of Health the form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. (See Attachment 10)

15. Piggybacking

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

16. M/WBE Utilization Plan for Subcontracting and Purchasing

The Department of Health (DOH) encourages the use of Minority and/or Women Owned Business Enterprises (M/WBE's) for any subcontracting or purchasing related to this contract. Bidders who are not currently a New York State certified M/WBE must define the portion of all consumable products and personnel required for this proposal that will be sourced from a M/WBE. The amount must be stated in total dollars and as a percent of the total cost necessary to fulfill the RFP requirement. Supportive documentation must include a detail description of work that is required including products and services.

The goal for usage of M/WBE's is at least 10% of monies used for contract activities (Minority-owned – 5%; Women-owned – 5%). In order to assure a good-faith effort to attain this goal, the DOH requires that Bidders complete the M/WBE Utilization Plan (Attachment 14.2) and submit this Plan with their bid documents.

Bidders that are New York State certified MBE's or WBE's are not required to complete this form. Instead, such Bidders must simply provide evidence of their certified status.

Failure to submit the above referenced Plan (or evidence of certified M/WBE status) may result in disqualification of the vendor from consideration for award.

## G. APPENDICES

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

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

The Bidder's proposal (if selected for award), including 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 H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)

APPENDIX I – Medicaid Confidentiality and data sharing forms

APPENDIX X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

## H. ATTACHMENTS

1. Bid Form
2. No Bid Form
3. Form of Contract
4. Appendix A – Standard Clauses for All New York State Contracts
5. Appendix D – General Specifications
6. Appendix H – Health Insurance Portability and Accountability Act (HIPAA)
7. Appendix I – Medicaid Confidentiality and data sharing forms
8. Appendix X – Modification Agreement Form
9. N.Y.S. Taxation and Finance Contractor Certification Form ST-220-TD
10. N.Y.S. Taxation and Finance Contractor Certification Form ST-220-CA
11. State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term
12. State Consultant Services Form B, Contractor's Annual Employment Report
13. Vendor Responsibility Attestation
14. M/WBE Procurement Forms
15. Bidder's Assurances
16. Workplan Template
17. Bidder's Checklist
18. Transmittal Letter
19. Conflict of Interest Form

**NEW YORK STATE  
DEPARTMENT OF HEALTH  
RFP # 0912291016**

**BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ FAU # \_\_\_\_\_

Bidder Name:  
Bidder Address:

Bidder Fed ID No:

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

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

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

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

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

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

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

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility:

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

(Add additional pages as necessary)

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

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

With Bid      Upon Award

1. A completed N.Y.S Taxation and Finance Contractor Certification Form ST-220.
2. A completed N.Y.S. Office of the State Comptroller Vendor Responsibility Questionnaire (for procurements greater than or equal to \$100,000)
3. A completed State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term

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\_\_\_\_\_

(Officer Signature)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Officer Title)

\_\_\_\_\_

(Telephone)

\_\_\_\_\_

(e-mail Address)

**NEW YORK STATE  
DEPARTMENT OF HEALTH  
RFP # 0912291016**

**NO-BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ FAU # \_\_\_\_\_

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

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

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

- Please retain our firm on your mailing list.

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

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

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

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

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

\_\_\_\_\_  
(e-mail Address)

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

# MISCELLANEOUS / CONSULTANT SERVICES Attachment 3

STATE AGENCYENCY (Name and Address): . NYS COMPTROLLER'S NUMBER:  
 .  
 . ORIGINATING AGENCY CODE:12000

CONTRACTOR (Name and Address): . TYPE OF PROGRAM(S):  
 .  
 .

CHARITIES REGISTRATION NUMBER: . CONTRACT TERM  
 . FROM:  
 . TO:

CONTRACTOR HAS ( ) HAS NOT ( ) TIMIELY.  
 FILED WITH THE ATTORNEY GENERAL'S . FUNDING AMOUNT FOR CONTRACT  
 CHARITIES BUREAU ALL REQUIRED . TERM:  
 PERIODIC OR ANNUAL WRITTEN REPORTS .

FEDERAL TAX IDENTIFICATION NUMBER: .

MUNICIPALITY NO. (if applicable): .

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

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

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

( ) 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.

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT  
 Precedence shall be given to these documents in the order listed below.

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



STATE OF NEW YORK  
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (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 invoices to the STATE's designated payment office:

.  
.

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

### III. Term of Contract

- A. Upon approval of the NYS 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.

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

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

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

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

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

**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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

(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; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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APPENDIX D  
GENERAL SPECIFICATIONS

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

Health in strict accordance with the specifications and pursuant to a contract therefore.

H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.

I. Non-Collusive Bidding

By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

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

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

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its or its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. **Work for Hire Contract**  
Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed or included in the application software provided to the Department as a part of this contract.
- M. **Technology Purchases Notification --** The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
  - 1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.

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

N. YEAR 2000 WARRANTY

1. Definitions

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

- a. Product shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g. consulting, systems integration, code or data conversion or data entry, the term Product shall include resulting deliverables.
- b. Vendor's Product shall include all Product delivered under this Agreement by Vendor other than Third Party Product.
- c. Third Party Product shall include products manufactured or developed by a corporate entity independent from Vendor and provided by Vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. Third Party Product does not include product where Vendor is: a) corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

## 2. Warranty Disclosure

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

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

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

## 3. Warranty Statement

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

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

In the event of any breach of this warranty, Vendor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Vendor's sole cost and

expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion.

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

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

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

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

T. Provisions Upon Default

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

U. Termination Provision

Upon termination of this agreement, the following shall occur:

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

V. Conflicts

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

W. MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT

The New York State Department of Health recognizes the need to take

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

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

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

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

#### X. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
  - a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the

contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).

- b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
  - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
  - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
  - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

Y. Certification Regarding Debarment and Suspension

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and

benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

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

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

Instructions for Certification

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

those regulations.

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

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
  - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
  - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Z. Confidentiality Clauses

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

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

AA. 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 15<sup>th</sup> 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, 11<sup>th</sup> Floor, Albany NY 12236 ATTN: Consultant Reporting - or via fax at (518) 474-8030 or (518) 473-8808; and
- c. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

BB. Provisions Related to New York State Procurement Lobbying Law

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

CC. Provisions Related to New York State Information Security Breach and Notification Act

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

DD. Lead Guidelines

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

## Appendix H

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

#### I. Definitions:

- (a) "Business Associate" shall mean the CONTRACTOR.
- (b) "Covered Program" shall mean the STATE.
- (c) Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health Act ("HITECH") and implementing regulations, including those at 45 CFR Parts 160 and 164 (the "Privacy Rule").

#### II. Obligations and Activities of the Business Associate:

- (a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- (b) The Business Associate agrees to use the appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the Covered Entity pursuant to this Agreement.
- (c) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Agreement.
- (d) The Business Associate agrees to report to the Covered Program, any use or disclosure of the Protected Health Information not provided for by this Agreement, as soon as reasonably practicable of which it becomes aware. The Business Associate also agrees to report to the Covered Entity any security incident of which it becomes aware. Such report shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during any breach of such information.

- (e) **The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Program agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.**
- (f) **The Business Associate agrees to provide access, at the request of the Covered Program, and in the time and manner designated by the Covered Program, to Protected Health Information in a Designated Record Set, to the Covered Program or, as directed by the Covered Program, to an Individual in order to meet the requirements under 45 CFR 164.524, if the business associate has protected health information in a designated record set.**
- (g) **The Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that the Covered Program directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Program or an Individual, and in the time and manner designated by Covered Program, if the business associate has protected health information in a designated record set.**
- (h) **The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of, the Covered Program available to the Covered Program, or to the Secretary of Health and Human Services, in a time and manner designated by the Covered Program or the Secretary, for purposes of the Secretary determining the Covered Program's compliance with the Privacy Rule.**
- (i) **The Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.**
- (j) **The Business Associate agrees to provide to the Covered Program or an Individual, in time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.**
- (k) **Effective February 17, 2010, the Business Associate agree 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) **General Use and Disclosure Provisions**

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

**(b) Specific Use and Disclosure Provisions:**

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

**IV. Obligations of Covered Program**

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

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

- (c) **The Covered Program shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Program has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.**

**V. Permissible Requests by Covered Program**

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

**VI. Term and Termination**

- (a) ***Term.* The Term of this Agreement shall be effective during the dates noted on page one of this agreement, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in The Agreement.**
- (b) ***Termination for Cause.* Upon the Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for the Business Associate to cure the breach and end the violation or may terminate this Agreement and the master Agreement if the Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or the Covered Program may immediately terminate this Agreement and the master Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible.**
- (c) ***Effect of Termination.***
  - (1) **Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Program, or created or received by the Business Associate on behalf of the Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.**

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

## **VII. Violations**

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

## **VIII. Miscellaneous**

- (a) ***Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.**
- (b) ***Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of the Privacy Rule, HIPAA, Public Law 104-191, and HITECH, Public Law 111-5, Division A, Title XIII and Division B, Title IV.**
- (c) ***Survival.* The respective rights and obligations of the Business Associate under Section VI of this Agreement shall survive the termination of this Agreement.**
- (d) ***Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Program to comply with the Privacy Rule.**
- (e) **If anything in this agreement conflicts with a provision of any other agreement on this matter, this agreement is controlling.**
- (f) **HIV/AIDS. If HIV/AIDS information is to be disclosed under this agreement, the business associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.**

## Appendix I

### Medicaid Confidential Data / Protected Health Information

Medicaid Confidential Data (MCD) includes, but is not limited to, names and addresses of Medicaid Bidders/beneficiaries, the medical services provided, social and economic conditions or circumstances, the Department's evaluation of personal information, medical data, including diagnosis and past history of disease and disability, any information regarding income eligibility-and amount of medical assistance payment, income information, and/or information regarding the identification of third parties. Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data. MCD also includes any information received in connection with the identification of legally liable third party resources under 42 C.F.R. § 433.138. Each element of MCD is confidential regardless of the document or mode of communication or storage in which it is found.

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

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

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

#### **AIDS/HIV Related Confidentiality Restrictions:**

ALSO NOTE that MCD may contain HIV related confidential information, as defined in Section 2780(7) of the N.Y. Public Health Law. As required by N.Y. Pub. Health Law Section 2782(5), the New York State Department of Health hereby provides you with the following notice:

#### **HIV/AIDS NOTICE**

*This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making*

*any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure.*

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

**Alcohol and Substance Abuse Related Confidentiality Restrictions**

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

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

**Bidder/Contractor**

**Signature.....Date...../...../.....**

**Name Printed.....**

**Company.....**

**SubContractor / Employee**

**Signature.....Date...../...../.....**

**Name Printed.....**

**Company.....**

The Contractor must maintain a copy of this agreement in its permanent records for each employee performing services pursuant to any contract awarded pursuant to RFP # 0907070849.

**MEDICAID AGENCY DATA USE AGREEMENT**

**AGREEMENT FOR USE OF CENTERS FOR MEDICARE & MEDICAID SERVICES  
(CMS) DATA CONTAINING INDIVIDUAL-SPECIFIC INFORMATION**

In order to secure Medicare data that resides in a CMS Privacy Act System of Records, and in order to ensure the integrity, security, and confidentiality of information maintained by CMS, and to permit appropriate disclosure and use of such data as permitted by law, CMS and the State of \_\_\_\_\_ enter into this agreement to comply with the following specific paragraphs.

1. This Agreement is by and between CMS, a component of the U.S. Department of Health and Human Services (DHHS), and the State of \_\_\_\_\_, hereinafter termed "User."
2. This Agreement addresses the conditions under which CMS will disclose and the User will obtain and use the Medicare Long Term Care Minimum Data Set (LTC/MDS) in section 7. This Agreement supersedes any and all agreements between the parties with respect to the use of the LTC/MDS and preempts and overrides any instructions, directions, agreements or other prior communication from the Department of Health and Human Services with respect to the data specified herein. Further, the terms of this Agreement can be changed only by a written modification to this Agreement, or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the User concerning this Agreement or the data specified herein, shall not be valid unless issued in writing by the CMS point-of-contact specified in section 5, or the CMS signatory to this Agreement shown in section 18. CMS reserves the right to terminate this agreement at any time if there is evidence that: (1) the agreement is not being complied with; (2) there is a violation of law in the manner of compliance; or (3) the agreement no longer complies with changes to statutory or regulatory requirements. Upon such notice, CMS will cease releasing data to the User under this Agreement and will notify the User either to return all previously released data files to CMS at the User's expense or destroy such data.
3. The parties mutually agree that CMS retains all ownership rights to the data file(s) referred to in this Agreement, and that the User does not obtain any right, title, or interest in any of the data furnished by CMS.
4. The parties mutually agree that the following named individual is designated as "Custodian" of the file(s) on behalf of the User, and will be responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use. The User agrees to notify CMS within fifteen (15) days of any change of custodianship. The parties mutually agree that CMS may disapprove the appointment of a custodian, or may require the appointment of a new custodian at any time.

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(Name of Custodian)

---

(Company/Organization)

---

(Street Address)

---

(City/State/ZIP Code)

---

(Phone Number Including Area Code and E-mail Address if applicable)

5. The parties mutually agree that the following named individual will be designated as “point-of-contact” for the Agreement on behalf of CMS.

---

(Name of CMS Contact)

---

(Title/Component)

---

(Street Address)

---

(City/State/ZIP Code)

---

(Phone Number Including Area Code and E-mail Address if applicable)

6. The User represents, and in furnishing the Medicare LTC/MDS, CMS relies upon such representation, that this file(s) will be used solely for the purpose(s) outlined below.

To facilitate the administration of a Federal health program for the purposes of determining participation requirements, evaluating and/or assessing cost effectiveness, and/or the quality of health care services provided, and/or for setting long term care Nursing Facility reimbursement rates in the State that are directly related to the administration of the State Medicaid Program. To facilitate State compliance with the requirements of the Americans for Disabilities Act.

The User shall not, unless explicitly provided for under contract, disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person(s). The User agrees that, within the User organization, access to the data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in this section. The User may issue reports, based on data

covered by this Agreement, that are directly related to the administration of the State Medicaid Program to the specific long term care Nursing Facility that has submitted the data.

7. The following file(s) and timeframe are covered under this Agreement:

File

Year(s)

LTC/MDS Resident Assessment Data File(s)

8. The parties mutually agree that the aforesaid file(s) (and/or any derivative file(s), including any file that maintains or continues identification of individuals) may be retained by the User for a maximum period of 10 years from the effective date of this agreement, hereinafter known as the retention date. The User agrees to notify CMS at least 30 days prior to the expiration of the aforementioned retention date in order to renegotiate this agreement. The User acknowledges that stringent adherence to the aforementioned retention date is required.
9. The User agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data, and to prevent its unauthorized use or access. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III--Security of Federal Automated Information Resources (<http://www.whitehouse.gov/omb/circulars/a130/a130.html>), which sets forth guidelines for security plans for automated information systems in Federal agencies. The User acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable or deducible information derived from the file(s) specified in section 7 is strictly prohibited. Further, the User agrees that the data must not be physically moved or transmitted in any way without written approval from CMS.
10. The User agrees that the authorized representatives of CMS, DHHS Office of the Inspector General or Comptroller General, will be granted access to premises where the aforesaid file(s) are kept for the purpose of inspecting security arrangements confirming whether the User is in compliance with the security requirements specified in section 9.
11. The User agrees that no findings, listing, or information derived from the file(s) specified in section 7, with or without identifiers, may be released if such findings, listing, or information contain any combination of data elements that might allow the deduction of a beneficiary's identification without first obtaining written authorization from the appropriate System Manager or the person designated in item number 18 of this Agreement unless the information derived from the files specified in section 7 are being used for purposes outlined in section 6. The User will notify any entity to which the data is transferred of the need to maintain the confidentiality of the data provided. Examples of such data elements include but are not limited to geographic indicator, age, sex, diagnosis, procedure, admission/discharge date(s), or date of death. The User agrees further that CMS shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from CMS's files identifies or would, with reasonable effort, permit one to identify an individual or to deduce the identity of an individual to a reasonable degree of certainty.

12. The User agrees that in the event CMS determines or has a reasonable belief that the User has made or may have made disclosure of the aforesaid file(s) that is not authorized by this Agreement, or other written authorization from the appropriate Systems Manager or the person designated in section 18, CMS in its sole discretion may require the User to: (a) promptly investigate and report to CMS the User's determinations regarding any alleged or actual unauthorized disclosure, (b) promptly resolve any problems identified by the investigation; (c) if requested by CMS, submit a formal written response to an allegation of unauthorized disclosure; (d) if requested by CMS, submit a corrective action plan with steps designed to prevent any future unauthorized disclosures; and (e) if requested by CMS, return data files to CMS immediately. The User understands that as a result of CMS's determination or reasonable belief that unauthorized disclosures have taken place, CMS may refuse to release further CMS data to the User for a period of time to be determined by CMS.
13. The User hereby acknowledges that criminal penalties under §1106(a) of the Social Security Act (42 U.S.C. §1306(a)), the Privacy Act (5 U.S.C. §552a(i)(3)), and 18 U.S.C. §641, which govern the use of these data, may apply to disclosures of information that are covered by this agreement.
14. By signing this Agreement, the User agrees to abide by all provisions set out in this Agreement for protection of the data file(s) specified in section 7.
15. The disclosure provision(s) that allow the discretionary release of CMS data for the purpose(s) stated in paragraph 6 follow(s).

**Long Term Care Minimum Data Set, System of Records #09-70-1517, routine use #2(c)**

16. On behalf of the User, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

\_\_\_\_\_  
 (Name/Title of Individual)

\_\_\_\_\_  
 (State Agency/Organization)

\_\_\_\_\_  
 (Street Address)

\_\_\_\_\_  
 (City/State/ZIP Code)

\_\_\_\_\_  
 (Phone Number Including Area Code and E-mail Address if applicable)

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

17. The Custodian, as named in paragraph 4, hereby acknowledges his/her appointment as custodian of the aforesaid file(s) on behalf of the User, and agrees to comply with all of the provisions of this Agreement on behalf of the User.

\_\_\_\_\_  
(Typed or Printed Name and Title of Custodian of File(s))

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

18. On behalf of CMS the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

a. \_\_\_\_\_  
(Typed or Printed Name and Title of CMS Representative)

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

b. Concur/Nonconcur \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of CMS System Manager or Business Owner)

c. Concur/Nonconcur \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of CMS Protocol or Project Review Representative)

## **INSTRUCTIONS FOR COMPLETING THE MEDICAID AGENCY DATA USE AGREEMENT (DUA)**

This agreement, which ensures compliance with the requirements of the Privacy Act, is required for a State Medicaid Agency to receive LTC/MDS data deriving from Medicare and private pay residents, and must be completed prior to the release of these files to the Medicaid Agency. No DUA is needed for release of LTC/MDS data derived exclusively from Medicaid residents; however, see the instruction below for item #7 in regard to this. Note that all data releases to the Medicaid Agency, including releases for Medicaid-only residents, must be electronically tracked for purposes of HIPAA compliance.

Instructions for the completion of the agreement follow:

**Before completing the DUA, please note that the language contained in this agreement cannot be altered in any form.**

- First paragraph, enter the name of the State.
- Item #1, enter the name of the State.
- Item #4, enter the Custodian's name, the State Medicaid Agency organizational unit, Address, Phone Number (including area code), and E-Mail Address (if applicable). The Custodian of files is defined as that person who will have actual possession of and responsibility for the data files. This will typically be the manager of the Medicaid agency unit with responsibility for the data files. If the person signing for the Medicaid agency as User is the same person as the Custodian, that person can appear and sign in both places.

If there are additional Custodians who are not direct Medicaid agency employees, such as academic or other consulting contractors, who assist the Medicaid agency in its use of the data for the purposes indicated in Item #6, an appropriate lead or managerial person from each such organization must complete and sign the Multi-Signature Addendum form.

Additional Custodian individuals or organizations can be included under the primary DUA as necessary over the life of the primary DUA. Each such individual or organization must be approved by CMS before they are permitted to function under the DUA. To include a new Custodian under an existing Medicaid agency DUA, submit the following to the CMS Regional Office: a letter from the Medicaid agency describing the activities planned for the new Custodian and the length of time over which the Custodian will serve; and a Multi-Signature Addendum completed and signed by an appropriate lead or managerial person from the Custodian organization. The Multi-Signature Addendum must show the DUA number of the existing primary Medicaid agency DUA. [end of 3<sup>rd</sup> bullet]

- Item #5 will be completed by the CMS Regional Office.

- Item #7, "Files," is pre-completed to show "LTC/MDS Resident Assessment Data File(s)." This wording is general and covers all MDS data. This all-inclusive language will reliably guide the technical staff who must retrieve the data.
- Medicaid Agencies must remain aware that the use of all the MDS data, regardless of program source, is limited to the purpose indicated in Item #6, i.e., for Medicaid program use. In addition, Medicaid Agencies must abide by all the restrictions regarding the MDS data, regardless of source, that are based on the Privacy Act and other law and regulation, and as expressed throughout this DUA.
- Item #7, Year(s): The Medicaid Agency may choose the time period for which it wishes to receive data, from a point in the past through up to 10 years into the future (see the Item #8 discussion of retention date). Examples are: "1998-2000;" "2001;" and "From 1998 through [insert date 10 years in the future]."
- Item #8 says that the group of data files indicated in Item #7 may be retained by the Medicaid Agency for a period of 10 years after the approval date (CMS' signature date) of the DUA. This date, which is 10 years in the future, is called the "retention date." For cases in which the Medicaid Agency receives data in an ongoing manner, the retention date does not move forward with each data release. For example, data released two months prior to the retention date (9 years and 10 months after the DUA approval date) may only be kept by the Medicaid Agency for two months. If it wishes to continue receiving data beyond the 10 year point, the Medicaid Agency must contact CMS at least 30 days prior to the retention date (and preferably 3-4 months prior) to request another DUA covering the period following the 10 year retention date.
- Item #16 is to be completed by the State Medicaid Agency.
- Item #17 is to be completed by the State Medicaid Agency Custodian.
- Item #18 will be completed by the CMS Regional Office.

## ADDENDUM TO DATA USE AGREEMENT (DUA)

Addendum to DUA for \_\_\_\_\_. If this is an addendum to a previously approved DUA, insert the CMS assigned DUA number here: \_\_\_\_\_. The following individual(s) may/will have access to CMS data that is being requested for this agreement. Their signatures attest to their agreement to the terms of this Data Use Agreement:

Name and Title of Individual <i>(typed or printed)</i>		
Task / Role of this individual in this project	Company / Organization	
Street Address		
City	State	ZIP Code
Office Telephone <i>(Include Area Code)</i>		E-Mail Address <i>(If applicable)</i>
Signature of Individual		Date
Signature of CMS Representative		Date
Signature of CMS Project Officer <i>(If applicable)</i>		Date

Name and Title of Individual <i>(typed or printed)</i>		
Task / Role of this individual in this project	Company / Organization	
Street Address		
City	State	ZIP Code
Office Telephone <i>(Include Area Code)</i>		E-Mail Address <i>(If applicable)</i>
Signature of Individual		Date
Signature of CMS Representative		Date
Signature of CMS Project Officer <i>(If applicable)</i>		Date

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0734. The time required to complete this information collection is estimated to average 30 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: Reports Clearance Officer, Baltimore, Maryland 21244-1850.

Agency Code 12000  
APPENDIX X

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

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

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

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

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

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

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

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

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

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

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

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

This will result in new contract terms of:

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

Signature Page for:

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

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

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

-----  
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: \_\_\_\_\_



# Contractor Certification

# ST-220-TD

(5/07)

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)				
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ( )
Covered agency or state agency	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address			Covered agency telephone number	

## General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

## Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

## Need help?



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



**Fax-on-demand forms:** 1 800 748-3676



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

**Sales Tax Information Center:** 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

**Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
*(name)* *(title)*  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**Section 1 — Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 — Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 — Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*







New York State Department of Taxation and Finance

# Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-CA

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help? on back*).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally appeared \_\_\_\_\_,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
\_he resides at \_\_\_\_\_,
Town of \_\_\_\_\_,
County of \_\_\_\_\_,
State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): \_he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).
This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.
Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.
Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.
This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931
To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

## Instructions

State Consultant Services  
Form A: Contractor's Planned Employment  
And  
Form B: Contractor's Annual Employment Report

Form A: This report must be completed before work begins on a contract. Typically it is completed as a part of the original bid proposal. The report is submitted only to the soliciting agency who will in turn submit the report to the NYS Office of the State Comptroller.

Form B: This report must be completed annually for the period April 1 through March 31. The report must be submitted by May 15<sup>th</sup> of each year to the following three addresses:

1. the designated payment office (DPO) outlined in the consulting contract.
2. NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236  
Attn: Consultant Reporting  
or via fax to -  
(518) 474-8030 or (518) 473-8808
3. NYS Department of Civil Service  
Alfred E. Smith Office Building  
Albany, NY 12239  
Attn: Consultant Reporting

Completing the Reports:

**Scope of Contract (Form B only):** a general classification of the single category that best fits the predominate nature of the services provided under the contract.

**Employment Category:** the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract. Access the O\*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at [online.onetcenter.org](http://online.onetcenter.org) to find a list of occupations.)

**Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.

**Number of hours (to be) worked:** for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.

**Amount Payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

State Consultant Services  
**FORM A**

**OSC Use Only**  
Reporting Code:  
Category Code:  
Date Contract Approved:

Contractor's Planned Employment  
From Contract Start Date through End of Contract Term

New York State Department of Health Contractor Name:	Agency Code 12000 Contract Number:
Contract Start Date:     /     /	Contract End Date:     /     /

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Totals this page:	0	0	\$ 0.00
Grand Total:	0	0	\$ 0.00

Name of person who prepared this report:

Title:

Phone #:

Preparer's signature:

Date Prepared:     /     /

Page     of  
(use additional pages if necessary)



RFP # 0912291016

**Vendor Responsibility Attestation**

To comply with the Vendor Responsibility Requirements outlined in Section E, Administrative, 8. Vendor Responsibility Questionnaire, I hereby certify:

**Choose one:**

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

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

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

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

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

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

**New York State Department of Health  
M/WBE Procurement Forms**

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

1. Bidders Proposed M/WBE Utilization Form
2. Minority Owned Business Enterprise Information
3. Women Owned Business Enterprise Information
4. Subcontracting Utilization Form
5. M/WBE Letter of Intent to Participate
6. M/WBE Staffing Plan

New York State Department of Health

**BIDDERS PROPOSED M/WBE UTILIZATION PLAN**

<b>Bidder Name:</b>	
<b>RFP Title:</b>	<b>RFP Number</b>

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

**PROJECTED M/WBE USAGE**

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

New York State Department of Health

**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:

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

New York State Department of Health

**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 ( ) -		\$ _____

**New York State Department of Health  
SUBCONTRACTING UTILIZATION FORM**

Agency Contract: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Contract Number: \_\_\_\_\_ Dollar  
 Value: \_\_\_\_\_  
 Date Bid: \_\_\_\_\_ Date Let: \_\_\_\_\_ Completion  
 Date: \_\_\_\_\_

Contract Awardee/Recipient: \_\_\_\_\_  
 Name

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Telephone

Description of Contract/Project  
 Location: \_\_\_\_\_

Subcontractors Purchase with Majority Vendors:

Participation Goals Anticipated: \_\_\_\_\_ % MBE \_\_\_\_\_ % WBE  
 Participation Goals Achieved: \_\_\_\_\_ % MBE \_\_\_\_\_ % WBE

**Subcontractors/Suppliers:**

Firm Name and City	Description of Work	Dollar Value	Date of Subcontract	Identify if MBE or WBE or NYS Certified

**Contractor's Agreement: My firm proposes to use the MBEs listed on this form**

Prepared By: (Signature of Contractor)	Print Contractor's Name:	Telephone #:	Date:
Grant Recipient Affirmative Action Officer Signature (If applicable):			

**FOR OFFICE USE ONLY**

Reviewed: By:	Date:
M/WBE Firms Certified: _____ Certified: _____	Not
CBO: _____	MCBO: _____

New York State Department of Health  
MWBE ONLY  
MWBE SUBCONTRACTORS AND SUPPLIERS  
LETTER OF INTENT TO PARTICIPATE

To: \_\_\_\_\_ Federal ID Number: \_\_\_\_\_

(Name of Contractor)

Proposal/ Contract Number: \_\_\_\_\_

Contract Scope of Work: \_\_\_\_\_

The undersigned intends to perform services or provide material, supplies or equipment as:

Name of MWBE: \_\_\_\_\_

Address: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

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

Designation:

MBE - Subcontractor

WBE - Subcontractor

MBE - Supplier

WBE - Supplier

Joint venture with:

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

Address: \_\_\_\_\_

Fed ID Number: \_\_\_\_\_

MBE

WBE

Are you New York State Certified MWBE? \_\_\_\_\_ Yes \_\_\_\_\_ No

The undersigned is prepared to perform the following work or services or supply the following materials, supplies or equipment in connection with the above proposal/contract. (Specify in detail the particular items of work or services to be performed or the materials to be supplied): \_\_\_\_\_

at the following price: \$ \_\_\_\_\_

The contractor proposes, and the undersigned agrees to, the following beginning and completion dates for such work.

Date Proposal/ Contract to be started: \_\_\_\_\_

Date Proposal/ Contract to be Completed: \_\_\_\_\_

Date Supplies ordered: \_\_\_\_\_ Delivery Date: \_\_\_\_\_

The above work will not further subcontracted without the express written permission of the contractor and notification of the Office. The undersigned will enter into a formal agreement for the above work with the contractor ONLY upon the Contractor's execution of a contract with the Office.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of M/WBE Contractor

\_\_\_\_\_  
Printed/Typed Name of M/WBE Contractor

**INSTRUCTIONS FOR M/WBE SUBCONTRACTORS AND SUPPLIERS LETTER OF INTENT TO PARTICIPATE**

This form is to be submitted with bid attached to the Subcontractor's Information Form in a sealed envelope for each certified Minority or Women-Owned Business enterprise the Bidder/Awardee/Contractor proposes to utilize as subcontractors, service providers or suppliers.

If the MBE or WBE proposed for portion of this proposal/contract is part of a joint or other temporarily-formed business entity of independent business entities, the name and address of the joint venture or temporarily-formed business should be indicated.

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

Check applicable categories:  Project Staff

Consultants  Subcontractors

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

Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

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

\_\_\_\_\_  
 Date

**Bidder's Assurances**

The Bidder's Assurances form **MUST** be signed in ink by an official authorized to bind the organization to the provisions of the RFP and Proposal for the Component bid. **Proposals which do not include this signed form will be considered non-responsive, resulting in rejection of the Proposal for that Component.**

1. The Bidder accepts the terms and conditions of this RFP as they relate to the part or parts on which the bidder has submitted a proposal.
2. The bid is valid for a period of two hundred forty (240) calendar days from the date of submission of the Proposal.
3. The Bidder agrees to be responsible to the Department for performance of all work specified in this Component of the RFP, including work assigned to subContractors.
4. The Bidder assures that the detailed work plan and schedule of deliverables set forth by the organization as its Technical Proposal for this Component will fulfill all statewide requirements as described in the RFP and will provide for the dedicated qualified staff, space, expertise and capacity to fulfill contract deliverables for this Component.
5. The Bidder assures the organization and its employees, subContractors, consultants and volunteers will implement and maintain policies and procedures to assure the confidentiality of personally identifiable data and information or records pertaining to patient care including compliance with all pertinent Health Insurance Portability and Accountability Act (HIPAA) requirements, Article 27F of the Public Health Law, and the privacy and confidentiality requirements of the Medicaid program. Please attach a copy of current policies from your organization.
6. The Bidder assures its ability to secure an indemnity (for at least \$5,000,000) to protect the organization and, in turn, the State against any loss of claim incurred as a result of carrying out the duties and responsibilities of this program. Please provide documentary proof to support this assurance, either by providing a certificate of insurance for existing general liability coverage or an insurance binder showing the availability of general liability coverage in at least this amount. Upon award of a contract, the State of New York must be listed on this policy.
7. The Bidder assures that no funds were paid or will be paid, by or on behalf of the Bidder, to any person for the purpose of influencing or attempting to influence any officer or employee of the federal or state government with regard to obtaining a contract for this Component.
8. The Bidder assures that it conforms to vendor responsibility requirements of State Finance Law. The Bidder has completed the Vendor Responsibility Questionnaire and Attestation.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Authorized Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

**Work Plan**  
(Sample Format)

A concise work plan is required to ensure that the Department and the contractor are both clear about what the expectations are under the contract. The following are required elements of this RFP designed to ensure that the minimum necessary information is obtained. DOH Waiver Management Staff may require additional information if deemed necessary. The core activities that are outlined in this RFP will be part of the work plan and will be audited for payment.

**Objectives:** will be quantifiable, thereby providing a useful measure with which to judge the contractor's performance. The work plan must contain SMART objectives for each goal. The objectives are **S**pecific, **M**easurable, **A**chievable, **R**elevant and **T**ime-bound.

**Activities:** will include activities or specific tasks to meet the stated objectives.

**Staff Responsible:** will identify staff responsible for each specific task within each activity.

**Timeframes:** will include regularly scheduled, periodic check-in points for assessing progress in addition to start and end dates. These established timeframes must be used to help organize activities.

**Measures of Effectiveness:** includes the standards to measure progress in achieving goals through the program objectives.

The agreed upon work plan is to be used by the Contractor as a basis for required reporting and a standard for performance.

The contractor's reports detailing achievement of scheduled work plan benchmarks will form the basis by which submitted vouchers for contracted-services are evaluated for payment.

The work plan will cover the contract period of April 01, 2010 –March 31, 2015. (Note that the dates may be subject to change).

WORK PLAN TEMPLATE

GOAL #

OBJECTIVES	ACTIVITIES PLANNED TO MEET OBJECTIVES	TIME FRAME	STAFF/PARTNERSHIP MEMBERS RESPONSIBLE	MEASURE OF EFFECTIVENESS

**BIDDERS' CHECKLIST – PROPOSAL ORGANIZATION**

**Technical/Program Proposal**

- Transmittal Letter
- Table of Contents
- Technical/Program Narrative General Section
- Mandatory Qualifications
- Preferred Qualifications
- Narrative: Organization Mission
- Narrative: Experience
- Narrative: Staffing
- Narrative: Training
- Narrative: Work Plan
- Subcontractor Letters of Intent, if any
- Bidder's Assurances
- HIPAA Business Associate Agreement
- Conflict of Interest Statement
- Medicaid Confidentiality and Data Use Agreements

**General Documentation & Vendor Responsibility**

- Curricula Vitae, Licenses and Certifications for Staff Managing the Contract and Assigned to Contract Functions if available
- Audited Financial Statements
- Subcontractor Financial Information, if applicable
- References
- Vendor Responsibility Questionnaire, if applicable
- Vendor Responsibility Attestation
- Additional Documentation

**Cost Proposal**

- Bid Form
- Consultant Services Form A
- Minority / Women's Business Enterprise (M/WBE) Forms
- Sales Tax Form ST-220-CA

**FORM FOR TRANSMITTAL LETTER  
(Please use your organization's official letterhead.)**

[Date]

New York State Department of Health  
Office of Long Term Care  
Bureau of Operations  
99 Washington Avenue, Room 826  
Albany, New York 12210

ATTN: Maribeth Gnozzio

Re: RFP #

The Bidder accepts all of the terms and conditions of RFP # Housing Payment Services for Traumatic Brain Injury Waiver Participants, as such terms and conditions are stated in the RFP, and submits this proposal without reservation. The Bidder assures the Department of Health that if awarded a contract for this RFP it will assume responsibility for performance of all of the work of the RFP including work assigned to or performed by Bidder's subcontractors, if any.

Name of Bidder:

Address of Bidder:

Name and Title of Official Contact Person:

Telephone Number of Contact Person:

Email address of Contact Person:

---

(Signature of Authorized Person)

---

(Date signed)

Print name of Authorized person above.

**Bidder Attestation – Conflict of Interest**  
(Must be attached to application packet)

I certify that the information provided is correct. I understand and agree that, at any time, the State may review all employer records and documentation necessary to ensure compliance with the requirements of the RFP and that any monies found to have been expended which are not in compliance with the terms and conditions of the grant may be recouped by the State. The bidder further agrees to comply with the requirements of the RFP including all appendices.

I certify that, if awarded a regional long term care assessment center contract, my organization including our employees and/or subcontractors

will or  will not provide long term care services that are the subject of this RFP.

I certify that, if my organization currently or in the future directly or indirectly through one or more affiliates provides long term care services that are the subject of this RFP, my organization, has or will have sufficient organizational mechanisms and policies in place to ensure the independence and autonomy of the regional long term care assessment center and to preserve the consumers' right to freedom of choice in selection of service providers.

[Note: At least one copy of the submitted proposals must contain original signatures.]

Signature of official from lead organization: \_\_\_\_\_

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

Title and Organization: \_\_\_\_\_

Correspondence Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

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