

New York State Department of Health

Office of Health Insurance Programs

Division of Financial Planning and Policy

Funding Availability Solicitation

New York State Medicaid Transportation Management Initiative

New York City

FAU No: 1103250338

Schedule of Key Events

Solicitation Release Date May 10, 2011

Written Questions Due4:00 pm, May 20, 2011

Response to Written Questions..... On or About June 1, 2011

Response to Solicitation Due3:00 pm, June 28, 2011

Contract Start DateAnticipated October 1, 2011

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

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List of Acronyms and Abbreviations

Below is a list of acronyms, abbreviations and their definitions as used in this Funding Availability Solicitation:

CMMA	Common medical marketing area (see Section F.3. for definition)
CMS	Centers for Medicare and Medicaid Services
Department	New York State Department of Health
District	The local department of social services that determines the Medicaid eligibility of an enrollee; in New York City, it is the New York City Human Resources Administration
eMedNY	The Department's Medicaid Management Information System, operated under contract by Computer Sciences Corporation
FAS	Funding Availability Solicitation
FFS	Fee-for-service
Fiscal Agent	Computer Sciences Corporation, a Department contractor which processes Medicaid prior authorizations and claims
FTE	Full-time equivalent
FFY	Federal fiscal year
HIPAA	Health Insurance Portability and Accountability Act
HRA	Human Resources Administration
Manager	Transportation Manager
M/WBE	Minority/Women-Owned Business Enterprise
NEMT	Non-emergency Medicaid Transportation
NYC	New York City
NYS	New York State
OHIP	Office of Health Insurance Programs, NYS Department of Health
OTPS	Other than personal services
OMIG	NYS Office of the Medicaid Inspector General
Practitioners	Hospitals, nursing homes, day programs, groups, clinics and individual medical practitioners who deliver care and services of the NYS Medicaid Program
SSL	Social Services Law
State	New York State

Section A: INTRODUCTION

As the federally recognized state Medicaid agency, the Department of Health is responsible for ensuring the availability of transportation for New York State Medicaid enrollees. The current transportation program delegates administrative responsibility to local departments of social services in the State's 57 counties and the Human Resources Administration (HRA), the social services agency for the five boroughs of New York City. The Department provides New York City and the counties with governing regulations, as well as published policy guidance.

Chapter 109 of the Laws of 2010 amended Section 365-h of the Social Services Law to give the Commissioner of Health the authority to contract for the management of Medicaid transportation services without meeting all procurement requirements specified in State Finance Law. The statute requires that the transportation manager or managers selected by the Commissioner must have **“proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York State”** within which the contractor would manage such services.

SSL §365-h requires the successful contractor procured through this FAS to:

- (1) make appropriate and economical use of transportation resources available in the district when meeting the anticipated demand for transportation within the district, including but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services; and
- (2) maintain quality assurance mechanisms in order to ensure that:
 - only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies is provided;
 - no expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available to eligible persons; and
 - transportation services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements and meet consumer satisfaction criteria approved by the Commissioner of Health.

Accordingly, this Medicaid Transportation Management Initiative Funding Availability Solicitation (FAS) is seeking to select one or more contractors to provide management and coordination of non-emergency medical transportation for Medicaid fee-for-service enrollees in New York City.

As part of a comprehensive effort to reform Medicaid transportation, the Medicaid Redesign Team (MRT) has adopted an initiative to carve out non-emergency medical transportation from the managed care benefit package, and have this service managed by State procured transportation management. Implementation of this initiative would significantly increase the volume of Medicaid enrollees eligible for fee-for-service transportation that the contractor selected pursuant to this FAS would be responsible for managing above the current eligible population.

Reimbursement to transportation providers is paid on a fee-for-service basis, when the costs of transportation are not included in the Medicaid rate paid to a program which the enrollee attends. For example, transportation services may be included in a day program or facility rate, that entity being responsible for arranging necessary transportation to and from the day program, and reimbursing providers. Also, currently in New York City the transportation of Medicaid enrollees covered by managed care is the responsibility of the managed care organization and reimbursed under their capitated rate.

As mentioned above, the MRT has approved the removal of non-emergency medical transportation as a covered managed care plan benefit. The implementation of this initiative will require the contractor selected pursuant to this FAS to also be responsible for the transportation of New York City Medicaid enrollees currently covered under managed care plans (please see **Attachment E**, Chart 5 regarding the implications of this implementation).

Access to health care for Medicaid enrollees requires both ensuring access to an appropriate number and type of medical practitioners, and the necessary mode of transportation to the services the practitioners provide. New York's Medicaid program covers transportation provided via commercial air, ambulance, ambulette, livery service, and public transit. Transportation provider fees are established locally by New York City and then approved by the Department.

New York, like other states, has struggled to continue to provide safe, reliable, and cost efficient non-emergency medical transportation for their Medicaid enrollees in an era of growing enrollment and rigorous fiscal constraint. In State Fiscal Year 2010-11, New York's fee-for-service spending for Medicaid transportation is projected to be \$446 million, with New York City expenditures at \$275 million.

During Calendar Year 2009, the New York State Medicaid program paid for over seven million (7,000,000) non-emergency ambulance, ambulette and livery trips and an estimated fifteen million (15,000,000) subway and bus trips for enrollees in New York City. These trips are the basis of New York State's commitment to assure that Medicaid enrollees living in New York City have access to necessary medical care and services.

The processing of such a large volume of transports requires a comprehensive approach, responding to various issues and constituencies. The Department requires prior authorization of these non-emergency trips as an important control safeguarding our commitment to provide trips only for eligible enrollees, using the appropriate mode

of transportation to Medicaid covered care and services. Currently in New York City, the Department relies on medical practitioners to coordinate the transportation needs of their Medicaid patients, and order trips using a paper prior authorization process established in the 1980's. The Department believes this process places an unwarranted demand on medical practitioners and does not adequately address the transportation needs of a changing Medicaid population.

For example, many medical practitioners capture transportation information electronically, and are forced to print pertinent trip information on the Department-issued prior authorization document, only to have the Department subsequently scan this information into a database. This inefficiency creates unnecessary administrative costs for both the practitioner and the Medicaid Program.

Further, healthcare delivery has transformed. During the last two decades, advances in research and technology have launched a proliferation of needed specialty care, sometimes centered among only a few major medical institutions. Enrollees who once relied on receiving medical care in their neighborhood must now travel greater distances to access this care. Accordingly, medical practitioners must be knowledgeable about transportation resources in not only their own neighborhood, but in the neighborhoods where their patients reside.

Increasing emphasis has been placed by policy makers on community based health care, leading to less reliance on institutional care of our most medically frail population. This cohort of Medicaid enrollees not only requires significant transportation resources, but has unique transit characteristics which require a focused response to ensure quality transportation.

New York City has a sophisticated public transit system that is designed to move passengers quickly across the City and is adequate for the able-bodied and those individuals with some disability whose public transit travel is in close proximity to one's residence/destination. Use of higher modes of transport, when public transit is inappropriate, is complicated by the urban congestion unique to New York City and the limited access points into and out of the Boroughs of Manhattan and Staten Island.

HRA is a partner to the Department and over the years has implemented educational seminars, reimbursement strategies, medical practitioner initiatives, and technological projects. While these have succeeded, none have addressed the fundamental need of modernizing the Medicaid Transportation Program's current practices and processes. Both the Department and HRA believe that modernization will enhance quality of transportation service and result in a more efficient process that will further reduce the administrative costs of the Medicaid Program.

The Department is soliciting a plan for a contractor to be a transportation manager of the Medicaid transportation program in New York City. Under the direction of Department staff, the contractor will:

- operate a modernized transportation prior authorization process;

- resolve problems with medical practitioners and facilities;
- provide innovative methods for improving transportation services;
- operate a viable, efficient call center operation to process requests for transportation; and,
- provide analytical reports regarding the transportation of New York City Medicaid enrollees on behalf of the Department of Health and HRA.

The contractor will not reimburse individual transportation providers for authorized transports. This reimbursement will continue to be made directly by the Department to the transportation provider. The contractor will be required to submit prior authorization data to the Department's fiscal agent through a HIPAA (Health Insurance Portability and Accountability Act)-compliant 278 transaction (an electronic request for prior authorization to the Medicaid Program) which will then allow transportation providers to submit a claim to the fiscal agent for payment. The Department will provide technical assistance to the contractor to ensure appropriate linkage to the Medicaid Management Information System (MMIS).

Due to the large number of Medicaid enrollees in New York City, ***the Department intends to begin implementation in the Borough of Brooklyn.*** The contractor will manage the transportation orders placed by medical facilities, programs, clinics and practitioners (hereinafter referred to as practitioners) in the borough in which the contractor is operating. These practitioners will order transportation for any eligible enrollee, regardless of the enrollee's borough of residence (i.e., the manager's responsibility is not residence-based, but rather is based upon the practitioner's service location). For example, while the great majority of transports will be neighborhood-based, a Brooklyn-based practitioner may request the transportation of an enrollee who resides in Queens to the Brooklyn-based practitioner's location, or request the transport of an enrollee to a practitioner in Queens for treatment. As this request is made by a Brooklyn-based practitioner, the contractor will be responsible to manage this request.

The contractor will not be responsible for arranging the transport of enrollees who reside in Brooklyn but travel without being referred by a Brooklyn-based practitioner to practitioners in other boroughs that are not yet under the contractor's management. Additionally, the contractor will not be responsible for arranging the transport of enrollees referred to a Brooklyn-based practitioner by a practitioner located in another borough.

Expansion to cover the remaining four boroughs (Queens, Bronx, Manhattan, and Staten Island) will follow the successful implementation of the Brooklyn initiative. These expansion decisions will be made by the Department with the input of HRA and, as appropriate, the contractor.

The Medicaid eligibility of some Medicaid enrollees who reside in New York City has been determined by New York State (i.e., the Department of Health, the Office of Persons with

Developmental Disabilities, or the Office of Mental Health). The contractor will be responsible for the transportation needs of these enrollees as well, coinciding with the borough implementation schedule described above.

Some Medicaid enrollees whose eligibility has been determined by HRA reside outside the five boroughs of New York City. For example, it is typical for many neighboring county nursing homes to have such enrollee residents. The contractor will be responsible for the transportation needs of these enrollees as well. Requests for transportation will be made by practitioners in these other counties; assumption of this work by the contractor will occur simultaneously with the implementation of the fifth and final borough.

Attachment E of the FAS contains pertinent transportation data, including the number of trips ordered by medical practitioners in each of the five boroughs.

The contractor selected by the FAS to be the transportation manager will meet on a regular basis as deemed necessary by the Department with the **Medicaid Transportation Advisory Council**, to be comprised of providers of medical services and medical transportation, New York City officials, professional associations, and/or any other representatives chosen by the Department to discuss issues related to the management of Medicaid transportation services. In addition, the contractor shall be required to meet with medical and transportation providers in the geographic areas of operation. The Department expects the contractor to consider the needs, concerns and suggestions of these provider groups and respond proactively where possible.

The contractor must employ staff who will interact on a daily basis with:

- Enrollees eligible for Medicaid transportation services;
- Medical practitioners who order Medicaid transportation;
- Medicaid transportation providers; and,
- Department and HRA staff who oversee the administration of Medicaid transportation services.

This solicitation is for an entity to provide management of Medicaid transportation services. Contractors will **not** be permitted to deliver any Medicaid transportation services; nor will the contractor be required to enlist a proprietary network of transportation providers. Rather, the contractor shall use existing and newly enrolled Medicaid transportation providers. However, this solicitation does require the contractor to develop methods to increase the current numbers of enrolled livery providers in the Medicaid Program, particularly in neighborhoods where this mode of transportation is lacking and needed.

The Department will enter into a contract that is based upon a per enrollee per month amount for administering transportation services, as described in the **Section D.5.1. Department Calculation of Monthly Payment.**

Subsequent to finalization of the contract, the Department expects the contractor to continue to work cooperatively with Department, practitioners, transportation providers and local social services officials on further refinements and adjustments to the plan.

Section B: Background

Chapter 109 of the Laws of 2010, amending §365-h of the Social Services Law (Attachment A), gives the Commissioner of Health the authority to contract for the management of Medicaid transportation services. The new law (signed by the Governor June 8, 2010) is intended to improve Medicaid transportation quality, while reducing costs and alleviating local administrative burdens.

The new law has the following major provisions:

- The Commissioner is authorized to enter into contracts with transportation managers and select contractors at his/her discretion. However, the Department of Health must post on its website for at least 30 days a description of the proposed contracted services, criteria for the selection of a contractor, the period of time during which a contractor may seek selection, and the manner by which a contractor may seek selection which may include electronic submission;
- If the Commissioner elects to “assume responsibility” from a local social services district for transportation, he must notify local social services officials in writing regarding the effective date of the responsibility;
- The Commissioner is authorized to contract with transportation managers that have proven experience in coordinating transportation services in a geographic and demographic area similar to which they will be operating in New York State;
- The transportation management contracts may include responsibility for review, approval, and processing of transportation orders, managing the appropriate level of transportation based on patient need, and the development of new technologies for transportation services;
- The Commissioner must, if appropriate, adopt quality assurance measures that may include global positioning tracking systems reporting requirements and service verification mechanisms. The Commissioner must further ensure that transportation services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulations and meet Commissioner approved consumer satisfaction criteria;
- Any rates of reimbursement developed and recommended by transportation managers must be reviewed and approved by the Commissioner; and,
- The law's provisions sunset four years after the execution date of a transportation management contract.

The Commissioner of Health has been given discretionary authority in the selection of a contractor. While the criteria for selection of a contractor are contained in this document, the Commissioner will weigh all the information contained in the proposed plan when making this decision. The Commissioner will consider the input of named references and the performance of the vendor in other managed Medicaid transportation endeavors, and appraise the character and competence of the plan. The Commissioner has the discretion to select one contractor, more than one contractor, or none at all. If more than one contractor is selected, each contractor will be assigned to manage the transportation needs of medical facilities and practitioners in one or more assigned borough(s).

The Department of Health is required by the federal government to administer the Medicaid transportation benefit in New York State. This obligation is critical to the success of the Medicaid Program, as the transportation of the poor and disabled is integral to achieving access to necessary care and service. The New York City Human Resources Administration (HRA) has established guidelines for ordering of transportation services. The New York City medical community cooperates greatly with the Department and HRA, incorporating ordering requirements into the overall continuum of care practices.

The prior authorization process involves three distinct groups, whose participation and cooperation in the prior authorization process is necessary:

- Enrollees,
- Medical practitioners, and
- Transportation providers.

By qualifying for New York Medicaid, many **enrollees** need travel assistance in order to secure necessary medical care. New York City enrollees are heterogeneous, many are foreign-born. However, the need for medical care is homogenous. The contractor will be responsible for appropriately interacting with all enrollees and providing the transportation that is required to and from medical care.

Medical practitioners are the linchpin of the Medicaid Program. Medical practitioners want to provide the best care for their patients. However, unless the patient arrives for an appointment, the capacity of the medical community to heal is diminished. Medical practitioners require a streamlined, efficient process for the ordering of transportation services. Further, medical practitioners know the impediments they face in securing necessary transportation of Medicaid enrollees. The contractor must communicate effectively with the medical community, regularly seeking input and direction, in order to resolve the barriers that currently exist in the transportation ordering process.

Transportation providers are needed to deliver quality, timely transportation. Transportation providers are experts in routing, traffic patterns, rush hour delays, and the difficulties they experience transporting some of the most disabled members of the community.

Each group is a customer of the Transportation Manager who will require different interventions and assistance. The contractor's plan must include viable methods of intervention that will lead to quality transportation services.

B.1. Current New York City Medicaid Transportation System

All non-emergency transportation requires the prior authorization of HRA or the Department and its fiscal agent prior to payment. A prior authorization is an acceptance by the Department of conditional liability for the trip costs and is required for a non-emergency transportation provider to receive reimbursement from the Medicaid Program for transportation services provided.

Transportation is available only to the care and services covered under the New York Medicaid Program. Reimbursement is available for the following modes of transportation to New York City enrollees, when that mode is needed to access medical care and service:

- Commercial air;
- Air and ground ambulance;
- Ambulette (wheelchair);
- Livery (centrally-dispatched) service; and
- Public (i.e., bus and subway).

Medicaid enrollees are expected to use public transit when traveling to medical care and services. However, when an enrollee's disability or medical condition is such that public transit is inaccessible, or when other factors contraindicate travel via public transit, other appropriate modes of transportation may be authorized.

Public transportation is utilized whenever appropriate. Generally, public transit is required when the enrollee lives within ten city blocks or one-half mile walk, whichever is greater, to or from a public transit depot. Public transit is not recommended for persons travelling more than ten city blocks or one-half mile walk, whichever is greater, to or from a public transit stop.

Currently, for enrollees who can access public transit, over 250 major medical facilities manually dispense a roundtrip Metrocard to eligible enrollees at the time of the appointment to cover the costs of travelling to and from that site. In turn, these medical facilities data-enter information into the HRA ***Public Transportation Automated Reimbursement*** (PTAR) system, resulting in a reimbursement paid by HRA to the facility for the costs of the dispensed Metrocards.

Enrollees who typically use or are capable of using public transportation for activities of everyday life are required to do so when traveling to and from medical care. The medical practitioner can reimburse the cost of public transportation to a Medicaid enrollee who meets following conditions:

- The enrollee is traveling to or from a service covered by the New York State Medicaid Program;
- The enrollees travel distance exceeds ten city blocks one way by the most direct route; or
- The enrollee is within the ten city block radius of the treatment location but is unable to reach treatment without use of a bus or subway due to an existing medical condition or inclement weather.

The medical practitioner is the linchpin of the Medicaid transportation program. The medical practitioner must address the transportation needs of Medicaid patients:

- First, the Medicaid enrollee makes an appointment with the medical practitioner. Simultaneously, the enrollee states the need for help with transportation, due to the inability to access public transit. (Note: After the first visit, the medical practitioner is aware of the enrollee's ongoing need for transportation).
- When the need for transport is for a mode other than public, the medical practitioner contacts a Medicaid participating transportation provider and arranges the pickup of the enrollee for the date of the appointment, conveying the enrollee's name, address, and appointment time information.
- The medical practitioner then proceeds to request authorization of the transport from the Department, in one of two ways:
 1. Dial a toll-free telephone number and give trip-specific information to a call services representative; or
 2. Mail a completed transportation prior authorization request form with the trip-specific information to the Department's fiscal agent.
- This request completes the prior authorization for the transport, generating a unique prior authorization number that is sent to both the medical practitioner and transportation provider.
- When the transport is completed, the transportation provider will submit a claim containing information matching the prior authorization information.

Currently, reimbursement is not available for transportation provided by yellow taxi (also known as medallion cab) vendors. In New York City, yellow taxis are typically hailed by a commuter on the street curb and point-to-point fare is paid upon completion of the trip. Therefore, the contractor will not be responsible for managing any travel via yellow taxi.

Reimbursement is also not available for use of a personal vehicle. Due to the saturation of public transportation in NYC, the contractor will not be responsible for managing any travel via a personal vehicle.

Stretcher van service has not yet been established; however development of this mode is a requirement of this solicitation.

B.2. Transportation Ordering Guidelines

Payment for non-emergency medical transportation will be made only when such transportation has been approved by the selected transportation management contractor. Under the New York State Medicaid program, payment is made for medical transportation when such transportation is essential for the Medicaid enrollee to obtain allowable and needed medical care and services. Emergency ambulance services, as defined in 18 NYCRR §505.10 and in 92 ADM-21 (Attachments B & F), are not covered in this FAS.

Generally, an enrollee should use the least expensive mode of transportation that is appropriate and available based on their medical condition, the medical provider's location, and the applicable medical practitioner's instructions. If the provider is within walking distance, and the enrollee's condition allows, the enrollee should walk. For Medicaid-eligible enrollees who need to be transported outside the common medical marketing area based upon a physician's instruction, payment will be made by the contractor for services via eMedNY (through the prior authorization process) at the least costly and most appropriate level of service.

Medicaid payments can be made only to lawfully authorized vendors of transportation services. In order to be eligible to receive payment, the vendor must be lawfully authorized on the date the services are rendered. All transportation providers enrolled in the Medicaid Program have met all conditions established for delivery of transportation in New York City. The contractor will not be responsible to affirm this enrollment status.

The medical practitioner must follow the guidelines below when arranging for Medicaid-funded transportation services:

- When traveling to medical appointments, a Medicaid enrollee is to use the same mode of transportation as used to carry out the activities of daily life. For most New York City residents, this mode is bus or subway. However, for some Medicaid enrollees, their condition necessitates another form of transport, such as livery, ambulette, or ambulance.
- In circumstances where public transit is not appropriate, Medicaid will pay for the **least costly, most medically appropriate** level of transportation to and from services covered by the Medicaid Program.
- The medical practitioner must consider the enrollee's current level of mobility and functional independence. The transportation ordered should be the least specialized mode required based upon the enrollee's current medical condition.

Livery, ambulette and non-emergency ambulance transportation of enrollees may be ordered only by specific medical practitioners as illustrated in the table below:

Livery and Ambulette	Non-emergency Ambulance
<ul style="list-style-type: none"> • Physician • Physician’s Assistant • Nurse Practitioner • Podiatrist • Optometrist • Dentist • Midwife • Therapist 	<ul style="list-style-type: none"> • Physician • Physician’s Assistant • Nurse Practitioner

Authorized staff of clinics, hospitals, nursing homes and other medical programs are permitted to order transportation on behalf of the aforementioned practitioners; however, evidence of the need for such transportation should be documented.

B.2.1. Guidelines for Ordering Livery Transportation

Livery transportation may be appropriate if any of the situations below apply:

- The enrollee is able to travel independently but, due to a debilitating physical or cognitive condition, cannot use the public transit system;
- The enrollee is traveling to and from a location which is inaccessible by public transit; or
- The enrollee cannot access the public transit system due to temporary inclement weather that prohibits use of the normal mode of transportation.

B.2.2. Guidelines for Ordering Ambulette Transportation

Ambulette transportation may be appropriate if any of the situations below apply:

- The enrollee requires the personal assistance of the driver in accessing or exiting the enrollee's residence, the ambulette, and the medical facility;
- The enrollee is wheelchair-bound and the wheelchair is non-collapsible or requires a specially configured vehicle to transport;
- The enrollee has a cognitive impairment and requires the personal assistance of the ambulette driver;

- The enrollee has a severe, debilitating physical weakness or is cognitively disoriented as a result of medical treatment and requires the personal assistance of the ambulette driver; or
- The enrollee has a disabling physical condition that requires the use of a walker, cane, crutch or brace and is unable to use a livery service or public transit.

B.2.3. Guidelines for Ordering Non-emergency Ambulance Transportation

Ambulance transportation may be appropriate if either of the situations below apply:

- The enrollee must be transported in a recumbent position (i.e., on a stretcher) and/or requires the administration of life sustaining equipment by trained medical personnel; or
- The use of a non-emergency ambulance is indicated when the enrollee's condition prohibits any other form of transport.

B.3. Current Challenges

The current New York City Medicaid Transportation system has unique challenges. A successful proposal must address meeting these challenges, as described below:

B.3.1. Neighborhood-Based Transportation System

Most transportation providers generally operate within neighborhoods of New York City, e.g., Astoria (Queens). These neighborhoods often contain significant medical resources. Therefore, primary medical care is typically found within five miles of one's residence. This five mile radius encompasses one's "common medical marketing area (CMMA)."

While primary care is generally available within one's CMMA, some specialty care appropriate to the enrollee's needs is available only outside the CMMA. However, the financial incentive for transportation providers has historically been to transport shorter distances and limit availability for more distant trips. This creates an access challenge.

Further, New York State has designed a network of specialty medical care centers, which specialize in the treatment of one or more conditions (e.g., cancer), or the treatment of a certain patient population (e.g., children). These specialty care facilities have an expansive catchment area far greater than that which the neighborhood-based transportation system is designed to accommodate.

B.3.2. Facility/Provider Contracts with Transportation Providers

Large medical facilities have contracted with particular transportation providers who are intentionally insured to protect the facility in the event some harm to an enrollee occurs during the transportation requested by the facility. As an unintended consequence, some transportation may currently be ordered solely based upon the contractual arrangement

rather than matching the transportation mode and provider to the medical needs of the enrollee.

While the arrangement may be mutually beneficial to both the facility and the transportation provider, the contractor shall ensure that Department guidelines are honored. These contractual arrangements may create a control challenge.

B.3.3. Livery Transportation

In some areas of New York City, livery transportation is not readily available for the Medicaid population due to disconnection between the general structure of the livery industry and the Department's authorization and reimbursement processes.

Typically, to operate a livery service in New York City, an individual purchases a sedan vehicle and secures a livery driver license from the New York City Taxi and Limousine Commission (TLC). This arrangement is sometimes referred to as "owner-operator transportation." To avoid advertising, telephone dispatch and office costs, the owner-operator contracts with an existing dispatch service. For a negotiated fee, the dispatcher assigns call-in trips to the owner-operator livery service that in turn collects and keeps the entire fare at the time of the trip. All fare income belongs to the owner-operator who must cover all his/her business costs from these fares. The dispatch service is as successful as the number of owner-operators under contract. Dispatch services may have dozens of owner-operators under contract, but dispatch services do not own vehicles. Further, the owner-operators are not considered employees of the dispatch service.

Established Medicaid processes conflict with this system. For example, while Medicaid fees are the same for travel within a five mile radius with an alternative fee over the five mile threshold, the livery operator expects differing amounts depending on distance of transport. Further, a claim for payment must be submitted to the Medicaid program after the service while a livery operator generally expects cash for each trip. Additionally, there is an expense involved in submitting a claim and awaiting reimbursement from the State that owner-operators are simply unwilling to incur. This dissonance leads to underutilization of the often medically-appropriate mode of livery transportation.

An innovative process that will meet the needs of all interested parties is required in order to increase the participation of these operators in the Medicaid program. Existing dispatch services may have viable solutions to this issue; the contractor will be expected to involve these services in developing a solution.

B.3.4. Specialized Transportation for the Obese, Scooters & Specially Designed Wheelchairs

The Medicaid program is directly affected by the increase in the number of physically disabled obese persons. Many ambulette vehicles are not currently designed to safely accommodate this cohort, i.e., wheelchair lifts are designed for lighter load limits. Additionally, some transports encounter substantial steps and other barriers that require lifting by multiple untrained persons.

Second, as the Department designs programs to enable the elderly and disabled to remain in the community, three-wheeled electric scooters and oversized wheelchairs are prevalent. Some ambulette vehicles are not designed to safely transport these types of assistive devices, thereby creating an access challenge.

B.3.5. Introduction of Stretcher Transportation

Many non-emergency ambulance transports are delivered to enrollees who require transportation in a recumbent position but have no need for medical intervention from medically trained personnel while en route to and/or from their medical appointments. With no stretcher van availability, ambulance providers are removed from their primary medical care mission, thereby creating an ambulance overutilization challenge.

B.3.6. Metrocard Reimbursement

Some Medicaid enrollees use public transportation to get to and from medical appointments. Currently, over 250 practitioners provide a \$4.50 (roundtrip) Metrocard to eligible enrollees at the point of service and then data-enter enrollee-identifying information into an electronic system developed by HRA called "Public Transportation Automated Reimbursement" or "PTAR." This results in reimbursement back to the practitioner for the outlaid Metrocard cost.

Participation in PTAR is voluntary. The majority of practitioners do not want to expend up-front money to purchase and process the distribution of Metrocards and await reimbursement. As a result, if an enrollee wants Metrocard reimbursement, the enrollee chooses to use only PTAR-participating practitioners. Expanding the availability of Metrocards to other practitioners will increase access to care. The contractor is expected to expand the use of PTAR, and may be expected to reimburse individual enrollees for the cost of using public transit to non-PTAR participating practitioners, when such reimbursement is authorized by the contractor.

HRA is expanding the use of PTAR by methadone maintenance treatment programs. The contractor may be required to assist with this expansion in the assignment of renewable Metrocards.

Section C. Project Specifications

The contractor will update the processes which involve medical and transportation providers and Medicaid enrollees, and process requests for transportation through a call center. To ensure success, medical practitioners, transportation providers, and enrollees must be actively and proactively engaged, by understanding and resolving current challenges and proposing innovative solutions to these challenges. The call center operation will meld these responses and innovations into a modernized call center operation. The implementation of dynamic, flexible, integrated, and collaborative processes that encourage innovation and efficiency in New York City transportation will result in a high quality Medicaid transportation program. Further, the Department is seeking a contractor to develop a Medicaid Transportation Program that is customer-friendly, personalized, simple, consistent and convenient.

Due to the volume of transportation activity incurred by the major medical practitioners in New York City, the contractor shall specify in the proposal the methods that will be implemented to ensure that the ordering of transportation service is both seamless and efficient. The Department is willing to consider the continued use of Department-generated paper forms currently utilized in the transportation process; however, a gradual transition to electronic processes will enhance the proposal. Copies of the current Department forms are located in Attachment F.

The contractor's primary relationship will be with medical practitioners, as most requests for transportation will be initiated by these entities. Easy, quick, and efficient methods of communicating information between the contractor and the medical practitioner will lead to improved access to care for Medicaid enrollees.

C.1. Location of Core Management Team

The contractor must maintain a core management team directly responsible for overseeing the day-to-day operations of the Medicaid Transportation Management Initiative. The success of the contractor will rely in part on the character of the team and accessibility of the team to the region covered by the FAS, i.e., New York City. **The contractor shall identify the proposed general location of this team, and explain how this location will allow the management team access to New York City in order to fulfill the requirements of the FAS.**

The call center is not held to this requirement, and may be located at the contractor's discretion.

The core management team must include the individual with principle responsibility of overseeing the day-to-day operations of the contract, and who will be available to liaison with the Department of Health's Office of Health Insurance Programs and HRA. Other core management team members must be aggregately knowledgeable of all functions required under the FAS.

C.2. Support and Education of the Medical Practitioner Community

The contractor must propose comprehensive strategies for specific transportation challenges in New York City. Bidders are expected to address the current challenges identified previously by conducting the following three activities:

- Medical Site Activity;
- Resource Development Activity; and
- Coordination Activity.

C.2.1. Medical Site Activity

The Department will provide transportation data to the contractor, listing the top medical practitioners ordering transportation services in the geographic area under consideration, with the following data:

- Name of the Medicaid facility/provider listed as the ordering practitioner of non-emergency Medicaid transportation;
- The total amount paid for trips ordered during a recent 12 month period by that medical practitioner;
- The names of the transportation providers receiving these payments;
- The number of trips by mode of transportation; and
- The unduplicated count of Medicaid enrollees associated with these trips.

It is anticipated that this activity will be progressively implemented, beginning with seven practitioners followed with activity among the next seven practitioner cohort. The anticipated work with each practitioner should be no more than two staff work days.

Minimally, the Medical Site Activity that would be required of the contractor includes, but is not limited to:

- Implementing a direct liaison between the facility and an identified member of the transportation management (contractor) team.
- Conducting a site visit in order to:
 - Detail the facility's process for ordering Medicaid transportation services;
 - List the names and identifying information of the transportation providers used;
 - List the names, titles, and organizational roles of the medical facility/provider and transportation provider involved in Medicaid transportation; and

- Record identified and/or perceived problem areas.

Upon completion of the initial site visit, collaborating with practitioner staff and developing a *Medicaid Transportation Action Plan* to resolve identified problems, correct practices that may conflict with existing Medicaid policy, ensure that the proper modes of transportation are ordered, and construct a timeline of implementation to correct identified deficiencies.

Maintaining the liaison role, responding to all future questions from practitioners regarding Medicaid transportation.

C.2.2. Resource Development Activity

The contractor will simultaneously pursue the development of transportation resources to be made available to medical practitioners as dictated by the *Medicaid Transportation Action Plan*.

Minimally, the Resource Development Activity required of the contractor includes, but is not limited to:

- Enhancing the availability of livery transportation by seeking providers to serve geographic areas in which there is a need, marketing livery transportation, and recommending to the Department proactive action to maximize the efficiency and expansion of available Medicaid-participating livery providers;
- Developing stretcher van transportation by advertising the need for stretcher van services, planning with medical practitioners the integration of stretcher transportation into requests, and marketing the availability of stretcher transportation to medical practitioners such as hospitals and nursing homes;
- Creating safe options for the conveyance of users of oversized wheelchairs and electric scooters via ambulette vehicles, including the transport of obese enrollees, by locating transportation vendors willing to provide safe transportation for those enrollees using these mobility devices or obese Medicaid enrollees, and establishing an efficient and effective approval/authorization process for medical practitioners; and
- Creating an accessible database of transportation service complaints and compliments regarding transportation provider timeliness, reliability, denial of requests for service, and professionalism, and consulting with impacted medical practitioners and offer remedies, with Department guidance.

C.2.3. Coordination Activity

Certain hospitals provide specialty medical care that serves the population of a large geographic area, often the entire five boroughs of New York City. For example, some

hospitals are dedicated to treating children's medical issues and provide unique, expert care unavailable at other hospitals within the catchment area. Current transportation provider reimbursement amounts are established with the confidence that medical care is available within one's common medical marketing area (CMMA) which generally encompasses the area within five miles from one's residence. However, specialty care hospitals serve patients from distances greater than the general CMMA.

Likewise, a substantial volume of regularly recurring transportation occurs to dialysis, substance abuse treatment, adult day health care and mental health day programs. These transports typically occur at the same time on designated days over a long period of time.

The Coordination Activity required of the contractor includes, but is not limited to:

- Designing a system that will assure that necessary transportation is available to all Medicaid enrollees in need of services provided by specialty care hospitals;
- Meeting with dialysis center, substance abuse, adult day health care and day program staff to investigate transportation utilization patterns; and
- Proposing methods to the Department to coordinate of transportation among geographic pockets of medical practitioners.

C.3. Processing Requests for Transportation through a Call Center

Minimally, services that would be required of the contractor for the processing of requests for transportation through a call center include, but are not limited to:

C.3.1. Creating and Maintaining a Public Website

The contractor shall create a public website to educate enrollees and medical providers about available transportation services, eligibility requirements and how to access transportation. Input from the medical and transportation provider communities on website design and display is expected. The website must:

- Be descriptive and user-friendly;
- Ensure instructions on accessing transportation services are primary;
- Provide the ability to submit email to the contractor and invite questions, complaints and input from website users.

Minimally, the following information (or links to sites containing the information) shall be found on the website:

- A list of essential contacts;

- A list of transportation providers, including the current address and telephone number of each provider, the geographic area covered by each provider, and the mode of transportation provided. Updates to this list within the previous thirty (30) days shall be indicated as a change to previous information;
- Available Medicaid transportation services;
- Information on utilization review of requests for transportation;
- Information on transportation service determination criteria;
- State-approved fee schedule by mode of service;
- List of acronyms (if applicable), definitions and program standards; and
- Links to transportation resources such as subway/bus maps and the paratransit system.

C.3.2. Establish a System to Receive All Transportation Requests

To receive and process all transportation requests from medical practitioners, Medicaid enrollees or their representative(s), the contractor shall:

- a. Demonstrate the ability to effectively manage transportation requests from a large number of Medicaid enrollees, their representative(s), and ordering medical practitioners. Transportation providers shall not request transportation as a representative of the enrollee.
- b. Establish an online web-based system for the transmission of requests from medical practitioners of transportation.
- c. Implement a system that will require all Medicaid enrollees in need of transportation for non-emergency or non-urgent medical care to request or have their representatives or medical practitioners request such services a minimum of 72 hours in advance.
- d. Receive requests in a timely and professional manner. Sufficient electronic system capacity, staffing, telephone and fax lines must be available to allow all calls to be answered in a reasonable time. The hold-time shall not exceed three minutes per call.
- e. Ensure that determinations on all requests are completed and communicated to transportation providers and enrollees at least 24 hours prior to the appointment.

- f. Establish a system for receiving requests from medical providers and arranging for urgent or discharge transportation, including the periods outside normal business hours and on weekends (i.e., 24 hours per day, 7 days per week).
- g. Establish a system that shall allow for post-transportation approval of transportation services. Post-transportation approval shall be allowed in instances when a prior approval was not obtainable, such as services requested when the contractor's call center was closed and a customer was unable to obtain approval to receive services to a verified urgent care service. The contractor's post-transportation approval policy shall ensure that all applicable requirements of prior approval are considered for the post-transportation, and shall establish a timeliness requirement for the submission of post-transportation approval requests in accordance with Department policy.
- h. Establish, with Department approval, an electronic system to allow for the review, collection, retention, and easy retrieval of the medical justification requests for livery, ambulette, stretcher, and non-emergency ambulance transportation. As some facilities may already have such an electronic modal justification system in place, the Department does not expect the contractor to implement a system that supersedes the facility's existing modal justification system. Currently, however, most medical practitioners use a paper form created by HRA to justify the use of a mode of transportation higher than public transit.

The Department will not require that every request for transportation be reviewed, as it is expected that the centrally-collected, comprehensible electronic system will capture and retain each enrollee's justified transportation needs in a non-laborious process accessible to all acceptable ordering providers, i.e., once an ordering provider justifies the mode of transportation for a particular enrollee, the justification will be electronically stored, thereby not obliging future duplication of that enrollee's transportation needs.

The Department expects the contractor to implement a process which will result in the expeditious review of orders on a rotating basis among ordering providers, as well as those identified areas of potential transportation-related abuse. The contractor shall be required to develop and maximize use of an electronic system of modal justification tailored to the capabilities and needs of each medical practitioner/facility. This review will occur with every practitioner and facility which has a *Medicaid Transportation Action Plan*. As these reviews are found consistently accurate, ongoing review of the compliant medical practitioners will cease.

- i. Establish a process for denial of a request for transportation. If a request for non-emergency Medicaid transportation services is considered

unnecessary or the destination is not a site of a covered Medicaid service, the contractor shall deny the request and enter the reason(s) for the denial in its information system on the same business day. The contractor shall generate and mail letters to enrollees no later than the next business day following the date a denial decision was made. The Department may mandate certain language be used in the written notification and may add, modify, or delete denial reasons as determined necessary.

At the request of the Department, the contractor shall prepare documents, reports, or exhibits and if and when necessary, appear on behalf of the HRA to provide expert testimony in any legal or administrative hearing related to the denial of transportation services.

C.3.3. Process Requests for Medical Transportation

To process requests for medical transportation, the contractor must:

- a. Maintain a toll-free telephone number and other toll-free voice and telecommunications devices, including devices appropriate for deaf clients. The toll-free telephone number shall be operational at least fifteen (15) calendar days prior to service begin date. The toll-free telephone number must be transferable to the Department, or other entity designated by the Department, upon the ending of the contract. Toll-free telephone access for approving requests for transportation services is required as follows:
 1. The contractor shall maintain sufficient personnel to perform the functions required herein for at least eleven consecutive hours during the hours of 7:00 a.m. through 6:00 p.m. Eastern Time, Monday through Friday.
 2. The contractor shall maintain voice mail routing and response procedures, with client option of staying in queue to reach a staff person, returning to voicemail, or to key-punching a telephone number to be returned within one hour.
 3. The contractor may observe designated Federal holidays. If the contractor observes additional or different holidays, the contractor must obtain the prior written approval of the Department. The contractor shall give the Department thirty (30) days' written notice of any other intended days, or partial days, of closure.
 4. The contractor shall provide twenty-four hour toll-free access in order to provide information on how to access transportation for an urgent medical condition, on holidays, weekends and outside business hours.
 5. The contractor shall maintain a call tracking system that records each individual call related to the provision of transportation services and,

upon request from the Department shall provide recordings of specified calls electronically to the Department. The call tracking system must be able to retrieve calls based upon telephone number and/or date of call. Callers shall be advised that calls are monitored and recorded for quality assurance purposes. Administrative lines need not be recorded. The call tracking system shall be able to record and aggregate the following information and produce the reports specified in this proposal as well as ad hoc reports that the Department may request on a daily, weekly, or monthly basis:

- i. The number of incoming calls;
 - ii. The number of calls receiving busy signals;
 - iii. The average time until there is a response from the automated voice response system;
 - iv. The number of calls that reach the automated voice response system;
 - v. The number of calls that reach call center staff;
 - vi. The average and maximum talk time;
 - vii. The average and maximum duration of calls that reach call center staff, from the point of pick-up of the automated voice response system to the conclusion of the call;
 - viii. The average and maximum time calls are placed on hold;
 - ix. The number of calls that are abandoned while on hold;
 - x. The average and maximum wait time on hold;
 - xi. The daily percentage of abandoned calls; and,
 - xii. The number of available call center staff operators by the time of day and the day of the week, in half-hour increments
6. The contractor shall maintain sufficient equipment and call center staff to ensure that, on a monthly basis:
- i. The automated voice response system is programmed to answer all calls within three rings;
 - ii. The queue time after the initial automatic voice response is three (3) minutes or less; and,

- iii. At least ninety-five percent (95%) of all incoming calls received during a single month are answered within three (3) minutes.
- b. Make oral interpreter services available as necessary to ensure that enrollees are able to adequately communicate with the contractor and transportation providers. The enrollee shall never be charged for necessary interpretation services.
- c. Confirm the individual's eligibility status as a Medicaid enrollee on the date of service, utilizing the New York State Medicaid Management Information System (ePACES, or other such system designated by the Department).
- d. Explain the rules and regulations of the New York State Medicaid transportation program.
- e. If the request is made by a Medicaid enrollee, interview the individual to determine their normal means of transportation, nature and severity of condition, caller's address, location of required medical service, transportation needs, whether the required medical service is a Medicaid covered service and other unique circumstances which have an effect on the need for payment for transportation services.
- f. Consistent with the information contained in Section C.3.2.h., obtain the Medical provider's recommendation to support and justify the request for prior authorization for non-emergency ambulance, ambulette, and livery services. The utilization of such modes of transport is a medical decision and requires the recommendation of a medical provider. The contractor shall provide the enrollee or the enrollee's representative or medical provider with a standard online or paper form for completion. Once the completed form is received by the contractor's staff, the information on the form shall be expeditiously reviewed and the request for prior authorization for non-emergency transportation will be approved or denied based upon New York State Medicaid program criteria.
- g. After determining the appropriate mode of transportation according to enrollee's needs, locate the most appropriate provider capable of meeting those needs at the lowest cost. An appropriate provider may be the subway/bus, taxi/livery, ambulette, stretcher van, or non-emergency ambulance. Transportation shall be assigned to providers with due consideration of the enrollee's individual needs.
- h. Establish a system for assigning rides that is fair and equitable to transportation vendors enrolled as a Medicaid transportation provider with New York State Department of Health and efficient for enrollees. **Such a system must be based on the principle that enrollees are free to use the transportation vendor of their choice.** Where this option is not

exercised, rides must be assigned to any participating provider operating in the relevant geographic area appropriate to the enrollee's individual needs.

- i. Approve appropriate transportation for hospital discharges (acute or psychiatric) when such requests are made by hospital clinicians (e.g. social workers, discharge planners, nurses, doctors, etc). The contractor shall contact an appropriate non-emergency medical transportation provider so that pick-up occurs within three hours of notification.
- j. Develop and implement a quality review management system that allows for the medical review of documentation provided when a mode of transportation request exceeds taxi/livery service (i.e., ambulette/stretchers/ambulance.)
- k. Develop and implement an automated web-based system to manage reservations, scheduling and routing of requests for non-emergency medical transportation.
- l. Determine whether to approve or deny the transportation request based on the information gathered from all sources and application of the relevant New York State Medicaid transportation rules and regulations.
- m. Select an appropriate transportation mode and vendor while considering consumer preference, adequately communicate with the vendor to arrange the transportation and send the trip order to the vendor. Generally, the enrollee should be assigned to the least expensive mode of transportation that is appropriate based on his or her medical condition and the location of the provider of medical services.
- n. Demonstrate the ability to provide a prior authorization for all scheduled trips and electronically transmit the request to the Medicaid Management Information System (MMIS). Finalize the authorization process by submitting trip data to MMIS through a HIPAA-compliant transaction.
- o. Develop and implement a system to ensure that scheduled trips are completed.
- p. Propose to the Department for approval and ultimately establish a suspension protocol for providers and drivers that fail to provide satisfactory services in a timely manner or fail to comply with regulations.
- q. Provide technical assistance and help-desk support to transportation vendors in need of assistance with prior authorization requests.
- r. Process changes to trip requests as required.

C.3.4. Process Special Transportation Requests

Specific rules must be applied to special requirements. The contractor will cooperate with the Department and HRA in the development and implementation of guidelines for authorizing multiple trips for enrollees attending regularly scheduled medical care; day programs; transportation outside the common medical marketing area; air ambulance transportation; nursing home transportation; and hospital admissions and discharges.

Prior authorization is not required for emergency medical transportation. Callers requesting emergency transportation shall be directed to call emergency services (911).

Requests for transportation to destinations outside New York City shall be reviewed and payment made only when sufficient medical documentation is received, reviewed, and approved by the contractor.

The contractor will encounter requests from enrollees who need transportation to medical facilities located in cities across the United States, outside the United States, and requests from practitioners located in other states seeking transport of an enrollee back to New York City. The contractor is expected to respond to these requests. Further, the contractor shall educate enrollees on the availability of reimbursement for incidental travel expenses, such as lodging and food, and create a system to collect receipts for such incidental expenses, reimburse the enrollee for these expenses, and submit a voucher to HRA staff in order to recoup the monies reimbursed to the enrollee.

C.3.5. Resolve Enrollee and Provider Complaints

The contractor must develop and implement a complaint resolution process for enrollee and provider complaints, and educate enrollees and medical providers on the process. Complaints must be investigated thoroughly, responded to and ultimately resolved within thirty (30) days from date when the complaint was received. Records of all complaints, investigations and resolutions must be maintained in the enrollee's records.

The contractor shall provide written notification to the enrollee at the time an adverse action is taken to deny or reduce a transportation service. The notice must indicate:

- the action taken and reasons for the action;
- the enrollee's right to file a grievance and request a State Fair Hearing; and
- basic instructions regarding the grievance filing and State Fair Hearing request processes.

The contractor shall review all actions for appropriateness and provide prior verbal notification of the action in addition to written notification. The contractor may not arbitrarily take an action on non-emergency transportation services solely because of the diagnosis, type of illness, or condition of the enrollee. The Department may mandate that certain language be used in the policies and written notification.

C.4. Transportation Provider Quality Standards

The contractor shall detail its plan to develop and implement procedures to measure transportation provider quality performance. The purpose of such procedures is to develop and apply standards to assure that enrollees receive quality transportation services at the lowest cost, utilizing the most efficient routes. Transportation provider quality standards address such issues as failure to meet appointments, timeliness of vehicle pickup and delivery, refusals to take longer trips, total travel time, and Medicaid enrollee and medical practitioner complaints.

The contractor will monitor the overall system to assure timely provision of quality, uniform services, and to ensure system integrity.

The contractor shall develop and implement policies and procedures regarding pick up and wait times. The policies and procedures must ensure that participants arrive promptly for appointments and do not wait excessively for transportation by adhering to following guidelines:

- Transportation providers must arrive no later than the scheduled pick-up time and may arrive up to fifteen minutes prior to the scheduled pick up time; however, the participant does not have to board the vehicle until the scheduled pick up time.
- In the event of emergency or unforeseen circumstance that prevents the transportation provider from meeting the approved window of time for pick up, the transportation provider must contact the enrollee or requesting entity and the contractor to notify them of the occurrence and coordinate resolution. It is ultimately the responsibility of the contractor to ensure the transportation request is fulfilled.
- In the event the delay renders the participant late for the participant's appointment or causes the participant to miss the appointment, details of the occurrence and resolution must be documented and provided to the Department in the *Enrollee Grievance Report* on a weekly basis.
- There shall be no more than a thirty minute gap between drop off time and the enrollee's scheduled medical appointment time.
- For unscheduled pick up times, the transportation provider shall pick up the participant within sixty minutes of notification.

C.5. Required Correspondence

As required, the contractor shall generate and disseminate episodic correspondence to individual practitioners, enrollees and transportation providers regarding program requirements, corrective action plans, eligibility issues, etc. The Department will be responsible for notifying practitioners, providers, and enrollees of any changes impacting the entire cohort of providers or enrollees.

When a request for transportation services for an individual is denied, a letter shall be sent to the enrollee explaining the reason for the decision and providing the enrollee's right to challenge the decision via Fair Hearing.

C.6. Record Keeping Requirements

To document that all Medicaid transportation rules and regulations are followed, the contractor must maintain complete electronic records of all medical transportation activities, segregated and readily retrievable for each Medicaid enrollee. Records shall include, minimally, a complete history of transportation requests for each enrollee, verification of Medicaid eligibility on the date of service, determination of service level need, and the arrangement for transportation. Additionally, comprehensive records of enrollee complaints and resolutions must be maintained.

When an enrollee exercises his or her right to a State Fair Hearing to review a decision concerning non-emergency medical transportation, the Contractor must present all pertinent information in verbal, electronic, and/or written format and, if necessary, be available to defend the decision in State Fair Hearings.

The contractor shall track services and report results monthly to the Department and HRA.

C.7. Required Reports

The contractor must allow the Department and HRA access to an electronic report retrieval system or, if such access is undeveloped, be prepared to respond immediately to requests for reports.

The contractor will develop templates of the following Quality Assessment and Improvement reports in Microsoft Excel format. The contractor shall submit all report templates to the Department for approval within sixty calendar days of receipt of the notice of award. Any changes to the report templates shall be submitted to the Department for approval thirty days prior to implementation.

- Telephone Report (monthly).
- Enrollee Grievance Report (monthly).

- Medical Provider Grievance Report (monthly).
- Transportation Provider Grievance Report (monthly).
- Transportation Denial Evaluation Report (monthly).
- One-Way Trip Report by Mode (monthly).
- Transportation provider Accident Report (only when enrollee is on the vehicle) (three days after notification of accident).
- Prior Authorization Activity Report (monthly).
- Additional reports, as agreed upon among the Contractor, the Department, and HRA.

The contractor shall maintain and retain all financial and programmatic records, supporting documents, statistical and other records of participants for six (6) years. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six year period, the contractor shall retain the records until completion of the action and resolution of all issues which arise from it or until the end of the regular six year period, ***whichever is later***. The contractor shall retain the source records for the contractor's data reports for a minimum of six years and have written policies and procedures for storing and retrieving this information.

C.8. Response to Potential Enrollee and Transportation Provider Fraud

The contractor must monitor the integrity of the prior authorization process including accuracy of prior authorization submissions to the State, and develop a system to identify possible fraud by both transportation providers and enrollees.

All cases of suspected fraud shall be reported in writing to the Department within twenty four hours of identification, no later than the close of the next business day.

C.9. Manuals and Guidelines

The contractor shall develop formal written procedures and guidelines for all aspects of the Medicaid transportation program. Such procedures and guidelines shall be distributed to all staff and updated to reflect changes in program requirements as necessary.

C.10. Staff Training

The contractor shall provide staff training to ensure all personnel have sufficient knowledge of the requirements of the New York State Medicaid transportation program.

C.11. Coordination with Other Local Medicaid Transportation Initiatives

The contractor shall coordinate with HRA to ensure no duplication of transportation requests and/or provision of services for the same day of service through linkage with existing local transportation systems and initiatives, e.g., the Public Transportation Automated Reimbursement (PTAR) system.

C.12. Assessment of Financial Penalty Regarding Contractor Performance of Call Center and Prior Approval Requirements

A financial penalty (a deduction from the amount reimbursed to the contractor) will be assessed on the contractor when the performance standards described below are not met. The Department will monitor two areas of contractor activities, and will assess a financial penalty when aberrant outcomes are discovered:

- Call Center Intake Activity; and
- Prior Authorization Activity

Call Center Intake Activity Penalty

In **Section C.3.3.a.6 above**, the following call center standards are listed:

The contractor shall maintain sufficient equipment and call center staff to ensure that, on a monthly basis:

- The automated voice response system is programmed to answer all calls within three rings;*
- The queue time after the initial automatic voice response is three minutes or less; and,*
- At least ninety-five percent (95%) of all incoming calls received in a single month are answered within three (3) minutes.*

A penalty will be assessed when any one of these three standards is not met during a given month. When any one of the standards is not met, the contractual amount to be reimbursed to the contractor will be reduced by five percent (5%). When two or more standards are not met during a given month, the contractual amount to be reimbursed to the contractor will be reduced by ten percent (10%).

Prior Authorization Activity Penalty

Penalties will be assessed after review and analysis of all prior authorization activity submitted to the State's fiscal agent via the HIPAA-compliant 278 process. The Department will use a complete file of one month's transactions based upon the **Submission Date** (the beginning submission date will be the first of the month, and the last submission date will be the last day of the month) on the Medicaid Management Information System (MMIS)-generated prior authorization transaction, a date that is automatically assigned to every MMIS transaction. This file will then be reviewed by

Department staff to determine if any of the following performance standards have been violated:

- The wrong transportation procedure code was assigned;
- The wrong dollar amount for the applicable procedure code was assigned;
- The wrong number of procedure code units was assigned for the transport;
- The calculation of miles assigned for a trip was wrong, as determined by a generally accepted standard of mileage determination, as agreed upon by the Department and the contractor;
- More than one prior authorization containing the same information is requested;
- A prior authorization for the same transport was requested for at least two different transportation providers; and,
- The submission for a prior authorization was made over thirty days from the date of service.

When the total number of prior authorization transaction errors is at or above 0.5% and below 1.0% of the total number of prior authorization transactions submitted to the State during any given month, the contractual amount to be reimbursed to the contractor will be reduced by 5%. This penalty will double to 10% when the error rate is equal to or greater than 1.0% of the total number of transactions.

Every error contained in a prior authorization will be counted, e.g., if one prior authorization contains the incorrect number of units and the wrong dollar amount to be reimbursed for that procedure code, this prior authorization will count twice.

Prior authorization error activity will be discussed with the contractor prior to each assessed penalty. The decision whether or not to assess the penalty will lie solely with the Department.

Section D. Proposal Requirements

D.1. Overview

This section provides directions for preparing proposals in response to the FAS. Bidders are responsible for carefully reading the FAS and responding to all requests for information. Proposals that fail to conform to the specified format, as well as those that do not include all required information, may be considered non-responsive, at the Department's sole discretion. As a result, the Department may reject such proposals.

In order to be considered for evaluation, each proposal must meet the following requirements:

- Separate technical and cost proposals are submitted prior to required deadline;
- A signed Transmittal Form (Attachment G) is submitted in the technical proposal.

Bidder responses should be as descriptive as possible, tailoring the plan to the specific nature of New York City Medicaid transportation needs and issues. While the Department will evaluate the response to the specific scope of work, proposals that expand upon the detailed scope and suggest alternative approaches, new remedies, departure from other state approaches, or details of lessons learned in other Medicaid transportation contracts may result in a higher score.

D.2. General Submission Requirements

In order for bidders to be considered for an award, the terms, conditions and instructions contained in the FAS, its cover letter, attachments, and submission requirements specified in Section E.3. should be met. Any proposals which do not meet these criteria may be considered non-responsive. The page limits should be adhered to. If a proposal section exceeds the maximum page length, reviewers will be instructed to cease reading at the end of the maximum number of pages. Proposals should be submitted with a single cover page and should be easily detached as copies of each proposal will be distributed to interested parties.

D.3. Conflict of Interest

- a) As part of its proposal submission, the bidder (and/or any subcontractor) must disclose any and all actual or potential conflicts of interest. In cases where such relationship(s) and/or interest exist, the bidder must describe how an actual or potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided. The bidders' disclosure must include any relationship or interest, financial, beneficial or otherwise, which is in conflict with the proper discharge of their responsibilities under this RFP, including but not

limited to any relationship or interest with entities which provide transportation services under the FAS. If there are none, so indicate.

The Department reserves the right to reject bids, at its sole discretion, based on any actual or perceived Conflict of Interest.

- b) All bidders and the resulting contractor shall ensure that its officers, employees, agents, consultants and/or sub-contractors comply with the requirements of the New York State Public Officers Law ("POL"), as amended, including but not limited to Sections 73 and 74, as amended, with regard to ethical standards applicable to State employees.
- c) In signing its Proposal, the bidder guarantees knowledge and full compliance with the provisions of the POL for purposes of this RFP and procurement. Failure to comply with these provisions may result in disqualification from the procurement process, or withdrawal of a proposed contract award, and criminal proceedings as may be required by law.
- d) If, during the term of a resulting contract, the Contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL, or which may otherwise be considered a conflict of interest, the Contractor shall notify the DOH in writing immediately. Failure to comply with these provisions may result in termination or cancellation of the resulting contract and criminal proceedings as may be required by law.

D.4. Technical Proposal

The technical proposal should address all of the Project Specifications. Additionally, it should reflect an understanding of the scope and purpose of the various review activities and tasks required under the contract.

To promote uniformity of preparation and to facilitate review, technical proposals are to include the following information, in the order prescribed below, and comply with the following general format requirements.

The Technical Proposal must be submitted separately from the Cost Proposal. The outside of the Technical Proposal package should be clearly labeled in bold **“New York State Medicaid Transportation Management Initiative – New York City Funding Availability Solicitation Technical Proposal (FAU #1103250338).”**

The Technical Proposal (including all copies thereof) should meet the following general format requirements:

- Use letter size 8.5 x 11 inch paper, double sided;
- Font type for narrative information should be a minimum of 11 point;

- Submit in three (3) ring binders;
- Use tab dividers for each section of the proposal; and
- Clearly number pages of the proposal, with each section of the proposal separately numbered and identified in the Table of Contents.

The Technical Proposal must include:

D.4.1. Transmittal Form (Attachment G)

Do not include any information regarding the cost of the proposal in the Transmittal Form. The Transmittal Form should be signed in ink by an official of the bidding organization. The signatory should be authorized to bind the organization to the provisions of the FAS and Proposal.

The Transmittal Form includes the following information:

1. The Bidder's complete name and address, including the name, mailing address, email address, fax number and telephone number for both the authorized signatory and the person the Department should contact regarding the proposal.
2. The FEIN, DUNS Number and Type of Legal Business Entity of the bidder;

The Transmittal Form includes the following attestations:

1. An attestation that the bidder accepts the contract terms and conditions contained in the FAS, including any exhibits and attachments, that the bidder has received and acknowledged all Department amendments to the FAS;
2. An attestation confirming that the bidder is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department;
3. An attestation that the bidder has disclosed any potential conflict of interest according to the requirements described in Section D.3. of the FAS, and the bidder has knowledge of and full compliance with the New York State Public Officers' Law, as amended, including, but not limited to, sections 73 and 74 with regard to ethical standards applicable to State employees, **OR** there is no conflict of interest.
4. An attestation of the proposal's expectation to utilize the services of a subcontractor(s), and if so, the bidder has provided, in an

appendix to the Transmittal Form, a subcontractor summary for each listed subcontractor.

The summary document should contain the following information:

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

D.4.2. Table of Contents

The Table of Contents is expected to contain beginning page numbers for each section and subsection of the proposal.

D.4.3. Executive Summary

Do not include any cost information in this section of the proposal. The Executive Summary should condense and highlight the contents of the bidder's Technical Proposal in such a way as to provide the Department with a broad understanding of the entire Technical Proposal. In addition, the Executive Summary should summarize the bidder's understanding of the various review components and required processes.

The Executive Summary should include a clear and concise summary of the proposed approach to the Project Specifications and staffing structure, as well as the Contractor's past experience conducting relevant projects. The Executive Summary should generally describe the capabilities and planned roles of any proposed subcontractor(s).

The Summary should describe the unique nature of the proposed managed transportation model and how efficiencies will be gained in both administrative expenses and transportation costs. Finally, you may choose to explain why the Department should select you as the contractor.

D.4.4. Performance Criteria (see page limits as indicated below)

In all sections below, the applicant must address the program components included in **Section C. Project Specifications**.

Responses are to be enumerated in direct correlation to each request below. For example, a response to Section **D.4.4.1 Support and Education of the Medical Practitioner Community** below should begin with “D.4.4.1.”

Detailed, specific information is expected. However, the bidder is expected to include activities that show an ongoing continuous improvement structure that is flexible and responsive, adaptable and creative. For example, the Department is requiring the contractor to develop websites which will streamline processes and educate users. We expect the contractor to have a conceptual design of the website; however, the processes to be used to create, develop and update a website are more critical than an actual website design.

While the Department seeks “solutions” to the current challenges listed in this document, the Department is aware that some solutions will be generated only by involving affected parties. The processes proposed to solicit the input and feedback of affected parties will be an important component of the proposal. Further, prescriptive application of transportation management that worked in other geographic areas may not result in successful implementation in New York City.

In completing the Technical Proposal, responses must be provided to the items listed below. For some responses, the Contractor may wish to include an attachment that adds great detail to the response, such as a flowchart of operations. Attachments are allowed, in a section following the Technical Proposal requirements, and each attachment should be identified with a tab divider. Further, the number of pages in these attachments will not be considered part of the actual count of pages listed below.

D.4.4.1. Support and Education of the Medical Practitioner Community (12 pages)

MEDICAL SITE ACTIVITY:

- Describe, in general, your approach to Medical Site Activity.
- How many people will visit each practitioner, and what number of days will you use to complete this activity?
- Describe a theoretical site visit; the staff you will talk to, the questions you will ask, and how you will explain the purpose of your visit.
- Describe a typical *Medicaid Transportation Action Plan*, including the anticipated length of the plan.

RESOURCE DEVELOPMENT ACTIVITY:

- Describe in general your approach to Resource Development Activity.
- Describe how you plan to enhance the availability of livery transportation in those geographic areas where there is a need, and how you will market livery transportation to medical practitioners.
- Describe how you will develop stretcher van transportation, and how you will market the availability of stretcher transportation to medical practitioners.
- Describe how you will create safe options for the transportation of persons with oversized wheelchairs and scooters via ambulette vehicles.
- Describe how you will create safe options for the transport of obese enrollees.
- Describe how you will establish an efficient and effective approval/authorization process for medical practitioners of transportation of users of oversized wheelchairs and scooters, and morbidly obese enrollees.
- Describe how you will create a database of transportation service complaints and compliments regarding transportation provider timeliness, reliability, denial of requests for service, and professionalism; further, describe how you will consult with impacted medical practitioners and offer remedies.

COORDINATION ACTIVITY:

- Describe in general your approach to Coordination Activity.
- Describe how you will design a system that will assure that necessary transportation is available to all Medicaid enrollees in need of services provided by specialty care hospitals.
- Describe how you will meet with dialysis center, and substance abuse and mental health program staff, to investigate transportation utilization patterns, including the intent of your meeting and the questions which you seek answers. Describe one possible method of trip coordination.

D.4.4.2. Processing Requests for Transportation (18 pages)

- Describe, in general, your approach to receiving and reconciling of all transportation requests from medical providers, Medicaid eligible individuals or their representatives. Describe how you will effectively manage transportation requests from up to 2.4 million Medicaid enrollees or their representative(s) or medical practitioners.

- Describe how you will develop and implement an automated web-based system to manage reservations, scheduling and routing of requests for non-emergency medical transportation; describe how you will minimize the operational costs of this automated web-based system while maintaining its functionality.
- If you are proposing the use of paper in the conveyance of medical necessity and actual order for a trip, describe your intent to use the existing Medicaid forms (*Livery, Ambulette and Non-emergency Ambulance Medicaid Transportation Prior Approval, MAP 2015*), *Transportation Prior Approval, eMedNY-3897*), or the reason why your proposed system of conveyance is superior.
- Describe how you will educate enrollees and practitioners about available transportation services, eligibility requirements and how to access transportation.
- Describe how you will implement the requirement that all Medicaid enrollees in need of transportation for non-emergency or non-urgent medical care, or their representatives or medical practitioners, request such services a minimum of 72 hours in advance. Describe your flexibility with the 72 hour threshold. Describe how you will allow for post-transportation approval of transportation services, when circumstances did not allow for the 72 hour notice.
- Describe how you will establish a system to evaluate the appropriateness of requests for livery, ambulette, and stretcher/ambulance transportation.
- Detail your process for denial of a request for transportation.
- Describe how you will ensure that determinations are completed and communicated to medical practitioners, transportation providers and enrollees at least 24 hours prior to the appointment.
- Describe how you will establish a system for receiving requests from medical providers and arranging for urgent care or discharge transportation, including periods of time before and after normal business hours and on weekends (i.e., 24 hours per day, 7 days per week).
- Describe how you will approve appropriate transportation for hospital discharges (acute or psychiatric) when such requests are made by hospital clinicians (e.g. social workers, discharge planners, nurses, doctors, etc.). Further, describe how you will ensure that pick-up occurs within three hours of notification.
- Describe how you will develop and implement policies and procedures regarding pick up and waiting times of enrollees.

- Describe how you will obtain the medical practitioner's recommendation which supports and justifies the request for prior authorization for non-emergency ambulance, ambulette, invalid coach (i.e., ambulette) and taxi/livery. Describe how you will develop and implement a quality review management system which requires a medical review of documentation provided when a mode of transportation request exceeds taxi/livery service (e.g., ambulette/stretchers/ ambulance).
- Describe how you will determine the appropriate mode of transportation according to the enrollee's needs. Describe how the enrollee will be assigned to the least expensive mode of transportation that is appropriate based on his or her medical condition and the location of the provider of medical services.
- Describe how you will locate the most appropriate transportation provider capable of meeting those transit needs of the enrollee.
- Describe how you will establish a system for assigning rides that is fair and equitable to transportation providers enrolled with the New York State Department of Health and efficient for Medicaid enrollees.
- Describe how you will determine whether to approve or deny the transportation request based on the information gathered from all sources and application of the relevant New York State Medicaid transportation rules and regulations.
- Describe how you will communicate with the transportation provider to arrange the transportation and send the trip order to the provider.
- Describe how you will be able to provide an authorization for all scheduled trips. Describe how you will process changes to trip requests, as required. Describe how you will provide technical support to transportation providers in need of assistance with prior authorization requests.
- Describe how you will electronically transmit the request to the eMedNY system; detail the timeline between the request for a transport, conveying information to the medical practitioner and transportation provider, and submission of pertinent data to eMedNY via a HIPAA-compliant transaction.
- Describe how you will develop and implement a system which ensures that scheduled trips are completed.
- Describe how you will establish a corrective action protocol for providers and drivers that fail to provide satisfactory services in a timely manner or fail to comply with regulations.

- Describe how you will develop and implement guidelines for authorizing multiple trips for enrollees attending regularly scheduled medical care; transportation outside the common medical marketing area; and nursing home transportation.
- Describe how you will respond to requests from enrollees or medical practitioners for travel to and from major medical facilities in cities located across the United States, including arranging for fixed wing air ambulance or commercial air.
- Describe how you will educate enrollees on other travel related expenses which can be reimbursed under the Medicaid program due to long distance/overnight travel, and the system you will develop to recover receipts, reimburse the enrollee for these out of pocket travel expenses, and submit a voucher to HRA staff.

D.4.4.3. Call Center Activities (6 pages)

- Describe how you will establish and maintain a toll-free telephone number and other toll-free voice and telecommunications devices, including devices appropriate for deaf clients. Describe how you will provide twenty-four hour toll-free access in order to provide information on accessing transportation for an urgent medical condition; and on holidays, weekends and outside business hours.
- Detail the location of the call center.
- Detail your assurance that you have or will have sufficient electronic system capacity, staffing, telephone and fax lines, in order to allow all calls to be answered within a reasonable timeframe.
- Describe how you will make oral interpreter services available.
- Detail how you will ensure that the time a telephone call may be placed on hold does not exceed three minutes.
- Describe how you will confirm the individual's eligibility status as a Medicaid enrollee on the date of service, utilizing the New York State Medicaid Management Information System.
- If the caller is a Medicaid enrollee, describe how you will interview the individual regarding their needs (i.e., a standard script).
- Describe the process by which a call services representative will log complaints received.

D.4.4.4. Additional Solicited Activities (5 pages)

- Describe the proposed website. Please detail the objectives of the website, including how it will be built and changed when necessary. Describe how you will respond to complaints and acknowledgements submitted through the website, and how you will minimize the operation costs of the website while maintaining its functionality.
- Describe how you will, upon denying a request for transportation services for an individual, inform the enrollee of the denial and the enrollee's right to question the decision by requesting a State Fair Hearing.
- Describe the complaint resolution process for enrollee and provider complaints and the general timeline to investigate, respond, and resolve the complaint.
- Describe how you will maintain records of all medical transportation activities, segregated and readily retrievable for each Medicaid enrollee. Describe how you will maintain records of enrollee complaints and resolutions.
- List the management and utilization reports you will make available to the Department and HRA, including a description of the intent of each report.
- Describe how you will monitor the integrity of the transportation authorization process and report suspected or reported fraud to the Department.
- Describe how you will develop formal written procedures and guidelines for all aspects of the Medicaid transportation program; describe how you will distribute these procedures and guidelines to all staff.
- Describe a plan to develop and implement procedures to measure transportation provider quality performance. Quality performance topics include, but are not limited to issues such as failure to meet appointments, timeliness of vehicle pickup and delivery, refusal to take longer trips, total travel time, and number of complaints about the provider. Include proposals for monitoring the overall system to assure quality services are being provided according to the measures developed.

D.4.5. Transportation Management Implementation Plan (6 pages)

The Contractor shall submit a *Transportation Management Implementation Plan* for approval by the Department that indicates the schedule for assuming transportation management activities, in accordance with the FAS and compliance with the requirements of SSL §365-h.

The Transportation Management Implementation Plan shall include a date-specific timeline for implementation of the solicited activities. Submit an anticipated date specific timeline for implementation of the solicited activities that supports the start date listed on the cover page of the FAS. Provide a brief work plan for program start-up and

implementation that supports the contract start date. Indicate the number and job title of the staff needed to fulfill activities on the timeline.

It is expected that the activities identified in Section C.2. (**Support and Education of the Medical Practitioner Community**) begin prior to and quicker than those in Section C.3. (**Processing Requests for Transportation through a Call Center**). However, it is paramount that some of the Processing Requests activities begin quickly, such as development and implementation of a public website.

The contractor may not begin managing New York City Medicaid transportation services prescribed by the FAS nor receive any payment until the Department determines that the following items have been satisfactorily completed:

- Call center operations are ready to commence;
- Medical practitioners in Brooklyn have been informed of new processes for ordering transportation;
- Transportation providers have been formally informed of new processes to receive trip and authorization information;
- The necessary system changes have been made in order to transmit authorization data to the Department's Medicaid payment system;
- Human Resources Administration staff have agreed on the readiness to transition Medicaid transportation management to the contractor; and
- The contractor's Transportation Management Implementation Plan required in this section has been approved by the Department.

D.4.6. Organizational Support and Experience (10 pages)

Provide the following information for the bidder's organization:

1. A brief history and description of your organization. Provide an organization chart.
2. Identify the organization's professional staff members who would be directly involved in this initiative, the experience each possesses, and the location of the office from which each will work. Clearly identify the members of the Core Management Team, their roles and location, as detailed in Section C.1. Describe your anticipated staffing pattern and related job descriptions for the staff positions responsible for both administration/management and direct service delivery.
3. Give the name and title of person(s) authorized to bind the bidder, the main office address, and telephone number (including area code).

4. Describe your organization's experience with the administration, provision and coordination of non-emergency medical transportation services which includes the following:
 - a) Experience in professional transportation coordination and delivery activities, including the scheduling, dispatching and provision of passenger transportation.
 - b) Capability to receive and process a large volume of telephone requests for non-emergency medical transportation.
 - c) Ability to learn and implement the rules and regulations for Medicaid eligible individuals.
 - d) Ability to utilize automated systems to support coordination and administration services.
 - e) Capacity to establish a partnership with various transportation vendors for the coordination of transportation services.
5. Describe your organization's proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York State within which the contractor would manage such services.
6. Describe your organization's experience in providing functional assessments to determine enrollee's level-of-need for the appropriate mode of transportation.
7. Provide information on the bidder's independent quality accreditation.
8. Describe your proposed network and data systems, including hardware and software used for each major type of function. Provide information on your technology system's back-up and redundancy capabilities.
9. Identify all subcontractors that you intend to use in fulfilling the requirements of the FAS and relevant experience of each. You should submit a letter from each planned major subcontractor stating their commitment to participate in the project described in the FAS, and their understanding of what their responsibilities will be (these letters will not count against the number of allowed pages of response).
10. Provide at least three references from similar projects in size and scope including name, title, address and telephone number of contact person. Do not include any reference letters, or letters of support.

D.5. Cost Proposal

The bidder should submit a Cost Proposal separate from the Technical Proposal. The Cost Proposal should be submitted in a sealed package and should be clearly labeled in bold **“Funding Availability Solicitation for Manager of New York City Medicaid Transportation Services (FAU #1103250338) – Cost Proposal.”**

The Cost Proposal consists of the following completed forms:

- Bid Form
- Audited Financial Statements
- Minority/Women Owned Business Enterprises (M/WBE) Utilization Plan Form (see Section E.16 and Attachment J)
- Vendor Responsibility Attestation (see Section E.9 and Attachment I)

Cost Proposals must be accurate, clear and concise. The Department reserves the right to reject any bid with inaccuracies in the Cost Proposal.

D.5.1. Department Calculation of Monthly Payment

The successful contractor procured through the FAS will receive a monthly payment determined by a fee negotiated with the Department of Health for each Medicaid enrollee that is eligible to receive fee-for-service transportation.

For informational purposes in the development of the Cost Proposal, the chart below outlines the Medicaid enrollees eligible for transportation services as of November, 2010.

Note: the figures in this chart do not guarantee current or future service levels.

Chart 1: Fee-for-Service and Managed Care Transportation Volume
By New York City Borough

A	B		C	D
			Impact of Medicaid Redesign Team (MRT) Proposal	
New York City Boroughs	Enrollees Eligible for Fee for Service Transportation		Enrollees Participating in Managed Care ¹	Volume With Proposal Fully Implemented Fee-for-Service and Managed Care Enrollee Transportation (B+C)
Bronx	105,782		458,551	564,333
Brooklyn	108,138		708,066	816,204
Manhattan	63,099		249,268	312,367
Queens	54,729		499,370	554,099
Staten Island	12,393		67,061	79,454
Total	344,140		1,982,317	2,326,457

¹Transportation services will be transitioned from the scope of benefits currently offered to enrollees covered by Medicaid managed care to fee-for-service transportation management by the selected contractor.

For the purposes of contractor payment, the volume of Medicaid enrollees will be calculated on the 15th day of each month. If the 15th day of any month is not a business day, the calculation will be made on the next subsequent business day of that month.

D.5.2. Bid Form

Attachment H contains the *Bid Form* that should be submitted in response to the FAS. Compliance with this provision will be evaluated as part of the Compliance Evaluation screening process explained in Section E.1 of the FAS. Failure to comply may result in disqualification of the vendor from consideration for award.

The bidder must submit a bid for each of the volume level categories (A, B, C, D, E) for the number of Medicaid enrollees eligible to receive fee-for-service (FFS) transportation, as indicated in the chart below:

Volume Level Category	Medicaid Enrollees Eligible to Receive Transportation	Per Enrollee, Per Month Cost Bid
A	0 to 100,000	
B	100,001 to 200,000	
C	200,001 to 400,000	
D	400,001 to 1,000,000	
E	1,000,001 and above	

While the fee schedule included in the Bid Form is expected to be used as the basis for the resultant contract, in the best interest of the State, all bids are subject to subsequent Department of Health negotiation with the successful bidder.

The volume of Medicaid enrollees eligible to receive fee-for-service transportation, therefore contractor reimbursement, may change during the contract period if the number of participating boroughs is increased, managed care plan enrollment fluctuates, or the costs of transportation are removed from a program rate, reverting to fee-for-service.

D.5.3. Company’s Financial Capacity and Stability

Bidders should provide evidence of their financial ability to perform the terms and conditions of the contract. Each bidder should include independently audited financial statements (not annual reports) for the last three full years of operations, even if they are proprietary in nature. If they are proprietary, indicate this in your bid. If a bidder is not required to have audits performed, a statement to that effect should be included with the cost proposal. If a bidder is not required to have independent audits performed, other evidence of financial ability to perform this project should be included for the same time period.

D.6. Method of Selection and Award

The Commissioner of Health will establish a FAS review team with expertise in the area of both the administration of the New York State Medicaid program and the delivery of Medicaid transportation services. Proposals deemed by the Department to be responsive to the submission requirements set forth in the FAS will be evaluated by the review team. The review team will evaluate both the bidder’s technical and cost proposals in the process of selecting a contractor.

In performing this evaluation, the review team may consider any other relevant information derived from the bidder's current or past employers and the State's and counties' previous experience with the bidder's transportation management performance.

The review team will make recommendations to the Commissioner for selection of a contractor(s) who is determined to be best suited to serve the purposes of Section 365-h of Social Services Law and the FAS project specifications at the most cost effective price to the State. The selected bidder(s) will have proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York State within which the contractor would manage such services.

D.6.1. Notification of Award

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

Section E. Administrative Issues

E.1. Issuing Agency

This FAS 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.

E.2. Inquiries

Any questions concerning this solicitation must be directed to:

Mr. Joseph Zeccolo
New York State Department of Health
Office of Health Insurance Programs
Empire State Plaza
Corning Tower, Room 2019
Albany, NY 12237
Phone: 518-486-6830
Email: jxz02@health.state.ny.us

To the degree possible, each inquiry should cite the FAS section and paragraph to which it refers. Written questions will be accepted until the date posted on the cover of the FAS.

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

The FAS is posted on the Department of Health's website at <http://www.nyhealth.gov/funding>. Questions and answers, as well as any updates or modifications, will also be posted on the Department's website at <http://www.nyhealth.gov/funding>. All such updates will be posted on or about the date identified on the cover sheet of the FAS.

There will not be a bidder's conference in conjunction with the FAS.

E.3. Submission of Proposals

Interested bidders should submit two originals and six bound copies in hardcopy format (8 complete sets in all) of both the technical and cost proposal. The bidder should also submit an electronic copy in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only. The eight (8) hardcopy sets and CD of the technical proposal should be packaged, labeled and sealed separately from the 8 hardcopy sets and CD of the cost proposal. The separate technical and cost packages should be mailed as one parcel.

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

The responses to the FAS should be clearly labeled “**New York State Medicaid Transportation Management Initiative – New York City (FAU #1103250338)**”:

Mr. Joseph Zeccolo
New York State Department of Health
Office of Health Insurance Programs
Empire State Plaza
Corning Tower, Room 2019
Albany, NY 12237

It is the responsibility of the bidder to see that complete copies of the proposal are delivered to Room 2019 prior to the date and time of the bid due date. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to Room 2019 will not be considered.

E.4. Reserved Rights

The Department of Health reserves the right to:

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

9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the contractor within the scope of the FAS in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the proposals received;
15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation.

E.5. Public Information

Disclosure of information related to this procurement and the resulting contract shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Article 6 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are exempt from disclosure.

Information constituting trade secrets or critical infrastructure information for purposes of FOIL shall be clearly marked and identified as such by the contractor upon submission. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

E.6. Voucher Submission, Payment and Supporting Documentation

If awarded a contract, the Contractor shall submit invoices and/or vouchers to the State's designated payment office at the postal address below:

Contract Manager
Medicaid Transportation Policy Unit
New York State Department of Health
Office of Health Insurance Programs

Bureau of Administration & Transportation Policy
Division of Financial Planning and Policy
Corning Tower, Empire State Plaza
Albany, NY 12237

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

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

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

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

The successful contractor will receive a monthly payment per Medicaid enrollee eligible to receive fee-for-service transportation (see chart in section D.4. Cost Proposal) which is based on a fee determined in accordance with the fee schedule submitted in the Cost Proposal and as negotiated by DOH in accordance with Section 365-h of Social Services Law and the FAS, in the best interests of the State. Payment will be made per Medicaid enrollee for only those counties where the contractor is implementing the Medicaid transportation management services prescribed by the FAS. **This monthly payment is an all inclusive reimbursement under the contract and will be the only compensation received by the contractor for performing the transportation management duties procured by the State through the FAS.**

The contractor cannot begin managing a county's transportation services prescribed by the FAS nor receive any payment until the Department determines that the following items have been satisfactorily completed:

- 1) Call center operations are ready to commence;
- 2) Medical practitioners in the county have been informed of new processes for ordering transportation;
- 3) Transportation providers have been formally informed of new processes to receive trip and authorization information;
- 4) The necessary system changes have been made in order to transmit authorization data to the Department's Medicaid payment system;
- 5) Human Resources Administration staff have agreed on the readiness to transition Medicaid transportation management to the contractor; and
- 6) The contractor's Transportation Management Implementation Plan required in Section C.8.b. has been approved by the Department.

For the purposes of contractor payment, the volume of Medicaid enrollees will be calculated on the 15th day of each month. If the 15th day of any month is not a business day, the calculation will be made on the next subsequent business day of that month.

The volume of Medicaid enrollees eligible to receive fee-for-service transportation, therefore contractor reimbursement, may change during the contract period if the number of participating boroughs is increased or reduced.

A financial penalty (a deduction from the amount reimbursed to the contractor) will be assessed on the contractor when the performance standards described below are not met. The Department will monitor two areas of contractor activities, and will assess a financial penalty when aberrant outcomes are discovered:

- Call Center Intake Activity; and
- Prior Authorization Activity

Call Center Intake Activity Penalty

In Section C.3.3.a.6 of the FAS, the following call center standards are listed:

The contractor shall maintain sufficient equipment and call center staff to ensure that, on a monthly basis:

- i. The automated voice response system is programmed to answer all calls within three rings;*
- ii. The queue time after the initial automatic voice response is three minutes or less; and,*

- iii. At least ninety-five percent (95%) of all incoming calls received during a single month are answered within three (3) minutes.*

A penalty will be assessed when any one of these three standards is not met during a given month. When any one of the standards is not met, the contractual amount to be reimbursed to the contractor will be reduced by 5%. When two or more standards are not met during a given month, the contractual amount to be reimbursed to the contractor will be reduced by 10%.

Prior Authorization Activity Penalty

Penalties will be assessed after review and analysis of all prior authorization activity submitted to the State's fiscal agent via the 278 process. The Department will use a complete file of one month's transactions based upon the Submission Date (the beginning submission date will be the first of the month, and the last submission date will be the last day of the month) on the Medicaid Management Information System (MMIS)-generated prior authorization transaction, a date that is automatically assigned to every MMIS transaction. This file will then be reviewed by Department staff to determine if any of the following performance standards have been violated:

- The wrong transportation procedure code was assigned;
- The wrong dollar amount for the applicable procedure code was assigned;
- The wrong number of procedure code units was assigned for the transport;
- The calculation of miles assigned for a trip was wrong, as determined by a generally accepted standard of mileage determination, as agreed upon by the Department and the contractor;
- More than one prior authorization containing the same information is requested;
- A prior authorization for the same transport was requested for at least two different transportation providers; and,
- The submission for a prior authorization was made over thirty days from the date of service.

When the total number of prior authorization transaction errors at or above 0.5% and below 1.0% of the total number of prior authorization transactions submitted to the State during any given month, the contractual amount to be reimbursed to the contractor will be reduced by 5%. This penalty will double to 10% when the error rate is equal to or greater than 1.0% of the total number of transactions.

Every error contained in a prior authorization will be counted, e.g., if one prior authorization has the incorrect number of units issued and also the wrong dollar amount to be reimbursed for that procedure code, this prior authorization will count twice.

Prior authorization error activity will be discussed with the contractor prior to each assessed penalty. The decision whether or not to assess the penalty will lie solely with the Department.

E.7. Term of Contract

This agreement shall be effective upon execution by the Commissioner of the Department as set forth in Section 365-h of the Social Services Law. Work can not begin until execution.

It is anticipated that the Department will award a contract for a three (3)-year period beginning on the date listed on the cover page of the FAS.

DOH has the option to extend the contract for two consecutive one-year periods.

The contract 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 contract shall be deemed terminated and canceled.

E.8. Early Termination Transition Plan

If the contract is terminated before the end of the contract period, the bidder will work with the State to transition any documents, reports, files, activities, and responsibilities to the Department, or its designee, to maintain and continue these state and federally mandated requirements.

E.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 or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment I).

E.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.

These forms are included as Attachments L and M.

E.11. Lobbying Statute

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

1. Makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
2. Requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
3. Requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
4. Authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
5. Directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
6. Requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;

7. Expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
8. Modifies the governance of the New York State Commission on Public Integrity;
9. Provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
10. Increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
11. Establishes the Advisory Council on Procurement Lobbying.

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

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

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

E.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.

E.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/>.

E.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.

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.

Website links to these forms are included as Attachment K.

E.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.

E.16. M/WBE Utilization Plan for Subcontracting and Purchasing

The Department 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 20% of monies used for contract activities (Minority-owned – 10%; Women-owned – 10%). In order to assure a good-faith effort to attain this goal, the Department requires bidders to complete the M/WBE Utilization Plan (Attachment J) and submit it 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.

E.17. Indemnification

1. Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract.
2. The Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and the Department from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by the Contractor, its agents, employees, partners or subcontractors, without limitation; provided however, that the Contractor shall not indemnify for the portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.
3. The Contractor shall indemnify, defend and hold the Department harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and cost which may be finally assessed against the Department in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or other third party proprietary right in relation to the Products furnished or utilized, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at the Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute of claim arises relative to a real or anticipated infringement, the State may require the Contractor, at Contractor's sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.
4. The Contractor shall not be obligated to indemnify that portion of damages, expenses (including reasonable attorneys' fees), claims, judgment, liabilities, cost or other dispute based upon; i) Department's unauthorized modification or alteration of a Product; ii) Department's unauthorized use of the Product in combination with the products not furnished by the Contractor; iii) Department's unauthorized use in other than the specified operating conditions and environment.
5. In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if the Contractor believes that it may be enjoined, the Contractor shall have the obligation, at its own expense and sole discretion as the State's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable, (ii) to modify the component so that it becomes non-infringing equipment of at least

equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the Department up to the dollar amount of the Contract Award. Time is of the essence in matters where the uses of any item(s) or part(s) thereof are enjoined.

6. For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being “without limitation”, and regardless of the basis on which the claim is made, the Contractor’s liability under the Contract for direct damages shall be limited to two (2) times the dollar amount of the contract including any amendments. Unless otherwise specifically enumerated herein, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.
7. Notwithstanding the foregoing or anything herein to the contrary, the Department will not consider any limitation of liability for personal injury or death, infringement, or damage to real or personal property, regardless of the nature of the damages sought for any such claim.
8. The Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due the Contractor, or may proceed against the performance and payment bond, maintenance or demolition bond, or letter of credit, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.
9. The Department does not agree to any indemnification provisions that require the Department to indemnify or hold harmless the Contractor or third parties.

Section F: Definitions

For the purposes of the Medicaid Program and as used in this request, the following terms are defined to mean:

F.1. Ambulance

An ambulance is a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

An ambulance service is any entity, as defined in Section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat, or other form of transportation to or from facilities providing hospital services and which is certified or registered by the Department as an ambulance service.

F.2. Ambulette

Ambulette or invalid coach is a special-purpose vehicle designed and equipped to provide non-emergency care that has either wheelchair-carrying capacity or the ability to carry disabled individuals.

An ambulette service is an individual, partnership, association, corporation, or any other legal entity which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care.

An ambulette service provides the invalid, infirm or disabled with personal assistance.

F.3. Common Medical Marketing Area

The common medical marketing area is the geographic area from which a community customarily obtains its medical care and services. Typically in New York City, this is within five miles from one's residence.

F.4. Conditional Liability

Conditional liability is the responsibility of the prior authorization official for making payment only for transportation services which are provided to Medicaid eligible individuals in accordance with the requirements of Title 18 (the regulations of the New York State Department of Social Services).

F.5. Department Staff

Employees of the New York State Department of Health, or designees of the Department of Health, for the purposes of this contract.

F.6. Emergency

A medical or mental health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention could reasonably be expected to result in placing the enrollee's physical or mental health (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, serious dysfunction of any bodily organ or part, serious harm to self or others due to an alcohol or drug abuse emergency, injury to self or bodily harm to others, or with respect to a pregnant woman having contractions: (1) that there is inadequate time to effect a safe transfer to a hospital before delivery, or (2) that transfer may pose a threat to the health or safety of the woman or the unborn child.

F.7. Enrollee

An enrollee is an individual who is enrolled in the Medicaid Program and is eligible to receive Medicaid services, including transportation.

F.8. Fee-for-Service

The payment of a fee by the Department directly to a service provider for a specified direct service.

F.9. Medical Escort

A paid or unpaid individual or caregiver accompanying a program eligible enrollee who is physically, mentally, or developmentally disabled and unable to travel or wait without assistance or supervision to receive a Medicaid covered service. The escort may drive or utilize transportation services with the program eligible enrollee.

F.10. Medical Necessity

Health care services are considered medically necessary when those services are:

- Medically appropriate;
- Necessary to meet the basic health needs of the enrollee;
- Rendered in the most cost-efficient manner and type of setting appropriate for the delivery of the covered service;
- Consistent in type, frequency, duration of treatment with scientifically based guidelines of national medical, research, or health care coverage organizations or governmental agencies;
- Consistent with the diagnosis of the condition;

- Required for means other than convenience of the enrollee or his or her physician;
- No more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;
- Of demonstrated value; and
- No more intense level of service than can be safely provided.

F.11. Medical Service Provider

An individual, firm, corporation, hospital, nursing facility, or association that is enrolled as a Medicaid provider, or provides a Medicaid coverable service free of charge (for example, a Veterans Administration Hospital, or local county Department of Health.)

F.12. Mode

The method used to provide transportation services to enrollees.

F.13. Metrocard

A Metrocard is a card similar in size to a credit card, containing a magnetic swipe strip that is used for paying for public transportation in New York City.

F.14. Non-Emergency Ambulance Transportation

Non-emergency ambulance transportation is the provision of ambulance transportation for the purpose of obtaining necessary medical care or services by a Medicaid enrollee whose medical condition requires transportation in a recumbent position.

Non-emergency ambulance transportation is transportation of a pre-planned nature where the patient must be transported on a stretcher or requires the administration of life support equipment, such as oxygen, by trained medical personnel.

F.15. No-Show

The result of a Medicaid enrollee or transportation service provider not keeping an appointment and failing to cancel the appointment.

F.16. Prior Authorization

A determination that payment for transportation is essential in order for a Medicaid enrollee to obtain necessary medical care and services and that the Medicaid Program accepts conditional liability for payment of the Medicaid enrollee's transportation costs.

F.17. Medical Practitioner

A medical practitioner is the Medicaid enrollee's attending physician or other medical practitioner who has not been excluded from or denied enrollment in the Medicaid Program and who is requesting transportation on behalf of the Medicaid enrollee in order for the Medicaid enrollee to receive medical care or services covered under Medicaid.

In New York City, the medical practitioner is responsible for initially determining when transportation to a particular medical care or service is medically necessary.

F.18. Stretcher Van

A vehicle that transports a prone or supine person who does not require medical attention while traveling to services.

F.19. Transportation Provider

A transportation provider is a lawfully authorized provider of transportation services who is actively enrolled in the Medicaid Program.

F.20. Transportation Services

Transportation services are services by ambulance, ambulette or invalid coach, taxicab, livery service, common carrier or other means appropriate to the Medicaid enrollee's medical condition; and transportation attendant to accompany the Medicaid enrollee, if necessary.

Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the Medicaid enrollee's family.

F.21. Urgent Care Transportation

"Urgent care" means that level of care ordered and verified by the individual's physician (online, by phone or fax) to be necessary on the day the request is made. Examples include, but are not limited to, high temperature, persistent rash, vomiting or diarrhea, symptoms which are of sudden or severe onset but which do not require emergency room services. Urgent care is generally determined by the enrollee's medical care provider, but not necessary.

An appointment shall be considered urgent if the medical service provider grants an appointment within forty-eight (48) hours of the enrollee's request.

A hospital discharge shall be considered an Urgent Trip.

Section G. List of Attachments

Attachment A	Transportation Manager Law (June 7, 2010)
Attachment B-1	Department of Health Regulation Title 18 of the New York Code of Rules and Regulation (NYCRR) 505.10 (Medicaid Transportation)
Attachment B-2	Directive to county departments of social services, 92 ADM-21, "Transportation for Medical Care and Services: 18 NYCRR 505.10"
Attachment C	New York City Medical Provider Transportation Ordering Guidelines
Attachment D	Medicaid Enrollee Fair Hearing Rights
Attachment E	Medicaid Enrollees, Users and Trips Data
Attachment F	Current Transportation Forms: <i>Livery, Ambulette and Non-emergency Ambulance Medicaid Transportation Prior Approval</i> (MAP 2015), and <i>Transportation Prior Approval</i> , (eMedNY-3897)
Attachment G	Transmittal Form
Attachment H	Bid Form
Attachment I	Vendor Responsibility Attestation
Attachment J	Minority/Women Owned Business Enterprises (M/WBE) Forms
Attachment K	Sales Tax Forms CA-220 and TD-220
Attachment L	State Consultant Services Form A
Attachment M	State Consultant Services Form B
Attachment N	Sample Standard NYS Contract with Appendices

Attachment A: Transportation Manager Law (June 7, 2010)

Section 365-h of the social services law, as added by chapter 8 of the laws of 1995 and subdivision 3 as amended by section 26 of part B of chapter 1 of the laws of 2002, is amended to read as follows:

S 365-h. Provision and reimbursement of transportation costs.

1. The local social services official and, subject to the provisions of subdivision four of this section, the commissioner of health shall have responsibility for prior authorizing transportation of eligible persons and for limiting the provision of such transportation to those recipients and circumstances where such transportation is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title.

2. In exercising this responsibility, the local social services official and, as appropriate, the commissioner of health shall:

(a) make appropriate and economical use of transportation resources available in the district in meeting the anticipated demand for transportation within the district, including, but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services; and

(b) maintain quality assurance mechanisms in order to ensure that

(i) only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title is provided [and];

(ii) no expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available to eligible persons; and

(iii) transportation services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements and meet consumer satisfaction criteria approved by the commissioner of health.

3. In the event that coordination or other such cost savings measures are implemented, the commissioner shall assure compliance with applicable standards governing the safety and quality of transportation of the population served.

4. The commissioner of health is authorized to assume responsibility from a local social services official for the provision and reimbursement of transportation costs under this section. If the commissioner elects to assume such responsibility, the commissioner shall notify the local social services official in writing as to the election, the date upon which the election shall be effective and such information as to transition of responsibilities as the commissioner deems prudent. The commissioner is authorized to contract with a transportation manager or managers to manage transportation services in any local social services district. Any transportation manager or managers selected by the commissioner to manage transportation services shall have proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York State within which the contractor would manage the provision of services under this section. Such a contract or contracts may include responsibility for: review, approval and processing of transportation orders; management of the appropriate level of transportation based on documented patient medical need; and development of new technologies leading to efficient transportation services. If the commissioner elects to assume such responsibility from a local social services district, the commissioner shall examine and, if appropriate, adopt quality assurance measures that may include, but are not limited to, global positioning tracking system reporting requirements and service verification mechanisms. Any and all reimbursement rates developed by transportation managers under this subdivision shall be subject to the review and approval of the commissioner. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner is authorized to enter into a contract or contracts under this subdivision without a competitive bid or request for proposal process, provided, however, that:

(a) the department shall post on its website, for a period of no less than thirty days:

(i) a description of the proposed services to be provided pursuant to the contract or contracts;

(ii) the criteria for selection of a contractor or contractors;

(iii) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(b) all reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner; and

(c) the commissioner shall select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section.

Attachment B-1: Title 18 of the New York Code of Rules and Regulations (NYCRR) Section 505.10

Title 18 New York State Rules and Regulations

Section 505.10 - *Transportation for Medical Care and Services*

Effective Date: 04/29/98

(a) Scope and purpose.

This section describes the department's policy concerning payment for transportation services provided to Medical Assistance (MA) recipients, the standards to be used in determining when the MA program will pay for transportation, and the prior authorization process required for obtaining such payment.

Generally, payment will be made only upon prior authorization for transportation services provided to an eligible MA recipient. Prior authorization will be granted by the prior authorization official only when payment for transportation expenses is essential in order for an eligible MA recipient to obtain necessary medical care and services which may be paid for under the MA program.

(b) Definitions.

(1) Ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

(2) Ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.

(3) Ambulette or invalid coach means a special-purpose vehicle, designed and equipped to provide non-emergency transport that has wheelchair-carrying capacity, stretcher-carrying capacity, or the ability to carry disabled individuals.

(4) Ambulette service means an individual, partnership, association, corporation, or any other legal entity, which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care. An ambulette service provides the invalid, infirm or disabled with personal assistance as defined in this subdivision.

(5) Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.

(6) Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.

(7) Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.

(8) Day treatment program or continuing treatment program means a planned combination of diagnostic, treatment, and rehabilitative services certified by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.

(9) Department established rate means the rate for any given mode of transportation which the department has determined will ensure the efficient provision of appropriate transportation to MA recipients in order for the recipients to obtain necessary medical care or services.

(10) Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.

(11) Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.

(12) Locally prevailing rate means a rate for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish rates for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.

(13) Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.

(14) Non-emergency ambulance transportation means the provision of ambulance transportation for obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation by an ambulance service.

(15) Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.

(16) Personal assistance means the provision of physical assistance by a provider of ambulette services or the provider's employee to an MA recipient for the purpose of assuring safe access to and from the recipient's place of residence, ambulette vehicle and MA covered health service provider's place of business.

Personal assistance is the rendering of physical assistance to the recipient in:

- walking, climbing or descending stairs, ramps, curbs or other obstacles;
- opening or closing doors;
- accessing an ambulette vehicle; and
- the moving of wheelchairs or other items of medical equipment and the removal of obstacles as necessary to assure the safe movement of the recipient.

In providing personal assistance, the provider or the provider's employee will physically assist the recipient which shall include touching, or, if the recipient prefers not to be touched, guiding the recipient in such close proximity that the provider of services will be able to prevent any potential injury due to a sudden loss of steadiness or balance.

A recipient who can walk to and from a vehicle, his or her home, and a place of medical services without such assistance is deemed not to require personal assistance.

(17) Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.

(18) Prior authorization official means the department, a social services district, or their designated agents.

(19) Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.

(20) Transportation expenses means:

- (i) the costs of transportation services; and
- (ii) the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.

(21) Transportation services means:

- (i) transportation by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the recipient's medical condition; and

(ii) a transportation attendant to accompany the MA recipient, if necessary.

Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.

(22) Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

(23) Vendor means a lawfully authorized provider of transportation services who is either enrolled in the MA program pursuant to Part 504 of this Title or authorized to receive payment for transportation services directly from a social services district or other agent designated by the department. The term vendor does not mean an MA recipient or other individual who transports an MA recipient by means of a private vehicle.

(c) Ambulette and nonemergency ambulance transportation.

(1) Who may order:

Only those practitioners, facilities, or programs listed in paragraph (4) of subdivision (d) of this section may order or submit an order on behalf of a practitioner for ambulette or nonemergency ambulance transportation services.

(2) Criteria for ordering ambulette transportation.

Ambulette transportation may be ordered if any one of the following conditions exist:

(i) The recipient needs to be transported in a recumbent position and the ambulette service ordered has stretcher-carrying capacity; or

(ii) The recipient is wheelchair bound and is unable to use a taxi, livery service, bus or private vehicle; or

(iii) The recipient has a disabling physical condition which requires the use of a walker or crutches and is unable to use a taxi, livery service, bus or private vehicle; or

(iv) The recipient has a disabling physical condition other than one described in subparagraph (iii) of this paragraph or a disabling mental condition, either of which requires the personal assistance provided by an ambulette service, and the ordering practitioner certifies, in a manner designated by the department, that the recipient cannot be transported by a taxi, livery service, bus or private vehicle and requires transportation by ambulette service; or

(v) An otherwise ambulatory recipient requires radiation therapy, chemotherapy, or dialysis treatment which results in a disabling physical condition after treatment and renders the recipient unable to access transportation without the person assistance provided by an ambulette service.

(3) Criteria for ordering nonemergency ambulance transportation.

Nonemergency ambulance transportation may be ordered when the recipient is in need of services while being transported to a provider of medical services which can only be administered by an ambulance service.

(4) Recordkeeping.

The ordering practitioner must note in the recipient's patient record the condition which justifies the practitioner's ordering of ambulette or nonemergency ambulance services.

(5) Audit and claim review.

An ordering practitioner or a facility or program submitting an order on the practitioner's behalf, which does not comply with this subdivision may be subjected to monetary claims and/or program sanctions as provided in section 504.8(a) of this Title.

(d) Prior authorization.

(1) Generally, prior authorization must be obtained before transportation expenses are incurred. Prior authorization is not required for emergency ambulance transportation or Medicare approved transportation by an ambulance service provided to an MA-eligible person who is also eligible for Medicare Part B payments. If transportation services are provided in accordance with section 505.10(e)(7) of this Part, the individualized education program or interim or final individualized family services plan of an MA eligible person will qualify as the prior authorization required by this subdivision.

(2) Requests for prior authorization may be made by the MA recipient, his or her representative, or an ordering practitioner.

(3) The recipient, his or her representative, or ordering practitioner must make the request in the manner required by the prior authorization official.

(4) A request for prior authorization for non-emergency ambulance transportation must be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, or nurse practitioner. A request for prior authorization for transportation by ambulette or invalid coach must be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner designated by the district and approved by the

department. A diagnostic and treatment center, hospital, nursing home, intermediate care facility, long term home health care program, home and community-based services waiver program, or managed care program may submit an order for ambulette or nonemergency ambulance transportation services on behalf of the ordering practitioner.

(5) Each social services district must inform applicants for and recipients of MA of the need for prior authorization in order for transportation expenses to be paid under the MA program and of the procedures for obtaining such prior authorization.

(6) The prior authorization official may approve or deny a request for prior authorization, or require the ordering practitioner to submit additional information before the request is approved or denied.

(7) The prior authorization official must use the following criteria in determining whether to authorize payment of transportation expenses in accordance with subdivision (d) of this section:

(i) When the MA recipient can be transported to necessary medical care or services by use of private vehicle or by means of mass transportation which are used by the MA recipient for the usual activities of daily living, prior authorization for payment for such transportation expenses may be denied;

(ii) when the MA recipient needs multiple visits or treatments within a short period of time and the MA recipient would suffer undue financial hardship if required to make payment for the transportation to such visits or treatments, prior authorization for payment for such transportation expenses may be granted for a means of transportation ordinarily used by the MA recipient for the usual activities of daily living;

(iii) when the nature and severity of the MA recipient's illness necessitates a of transportation other than that ordinarily used by the MA recipient, prior authorization for such a mode of transportation may be granted;

(iv) when the geographic locations of the MA recipient and the provider of medical care and services are such that the usual mode of transportation is inappropriate, prior authorization for another mode of transportation may be granted;

(v) when the distance to be traveled necessitates a large transportation expense and undue financial hardship to the MA recipient, prior authorization for payment for the MA recipient's usual mode of transportation may be granted;

(vi) when the medical care and services needed are available within the common medical marketing area of the MA recipient's community, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be denied;

(vii) when the need to continue a regimen of medical care or service with a specific provider necessitates travel which is outside the MA recipient's common medical marketing area, notwithstanding the fact that the medical care or service is available within the common medical marketing area, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be granted; and

(viii) when there are any other circumstances which are unique to the MA recipient and which the prior authorization official determines have an effect on the need for payment of transportation expenses, prior authorization for payment for such transportation expenses may be granted.

(e) Payment.

(1) Payment for transportation expenses will be made only when transportation expenses have been prior authorized except for emergency ambulance transportation or Medicare approved transportation by an ambulance service provided to an MA-eligible person who is also eligible for Medicare Part B payments.

(2) Payment for transportation expenses will be made only to the vendor of transportation services, to the MA recipient or to an individual providing transportation services on behalf of the MA recipient.

(3) Payment will be made only for the least expensive available mode of transportation suitable to the MA recipient's needs, as determined by the prior authorization official.

(4) Payment to vendors for transportation services must not exceed the lower of the department established rate, the local established rate, the locally prevailing rate, or the rate charged to the public, by the most direct route for the mode of transportation used. However, payment may be made in excess of the locally prevailing rate or the rate charged to the public when federal financial participation in the MA payment for transportation services is available and such payment is necessary to assure the transportation service.

(5) Payment to vendors will be made only where an MA recipient is actually being transported in the vehicle.

(6) In order to receive payment for services provided to an MA recipient, a vendor must be lawfully authorized to provide transportation services on the date the services are rendered. A vendor of transportation services is lawfully authorized to provide such services if it meets the following standards:

(i) ambulance services must be certified or registered by the Department of Health and comply with all requirements of that department.

(ii) ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission.

(iii) taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality and with all requirements of the Department of Motor Vehicles; and

(iv) Vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under Article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements.

(7) Payment is available for transportation services provided in order for the recipient to receive an MA covered service if the recipient receives such service (other than transportation services) at school or off of the school premises and both the covered service and transportation service are included in the recipient's individualized education plan. Payment is available for transportation services provided in order for the recipient, or the recipient's family member or significant other to receive an MA covered service if both the covered service and transportation service are included in the recipient's interim or final individualized family services plan. For purposes of this section, a significant other is a person who substitutes for the recipient's family, interacts regularly with the recipient, and affects directly the recipient's developmental status. Reimbursement for such services must be made in accordance with the provider agreement.

(8) Payment to a provider of ambulette services will only be made for services documented in contemporaneous records in accordance with section 504.3 of this Title. Documentation must include:

(i) the recipient's name and MA identification number;

(ii) the origination of the trip;

(iii) the destination of the trip;

(iv) the date and time of service; and,

(v) the name of the driver transporting the recipient.

(9) Payment will not be made for transportation services when:

(i) the transportation services are ordinarily made available to other persons in the community without charge; however, payment may be made under such circumstances when federal financial participation in the MA payment for transportation services is available;

(ii) the transportation services are provided by a medical facility and the costs are included in the facility's MA rate;

(iii) a vendor is not actually transporting an MA recipient;

(iv) the MA recipient has access to and can make use of transportation, such as a private vehicle or mass transportation, which the recipient ordinarily uses for the usual activities of daily living unless prior authorization has been granted by the prior authorization official.

(f) Medical transportation plans and rate schedules.

(1) The department may either establish rate schedules at which transportation services can be assured or delegate such authority to the social services districts.

(2) As directed by the department, each social services district must prepare and submit for department approval a medical transportation plan which provides for essential transportation of MA recipients to and from medical care and services which may be paid for under the MA program and the rate schedules to be used by the district. The department will approve a transportation plan if it finds that the plan satisfactorily demonstrates that appropriate modes of transportation are available to MA recipients in the social services district and that the rates of payment for transportation are adequate to ensure the availability of transportation to and from medically necessary care and services which can be paid for under the MA program.

(i) Amendments to transportation plans or changes to rate schedules must be submitted at least 60 days prior to the effective date of the amendment. The department may permit a shorter notification period in circumstances where the department has adequate time to review the proposed amendment prior to its effective date. Factors which will be considered in determining whether to shorten the notification period include, but are not limited to, the complexity of the proposed amendment and the number and complexity of any other proposed amendments which the department is reviewing when the request is made. The department may also waive the notification period at the request of the social services district where a waiver would permit more efficient and effective administration of the MA program.

(ii) Plans, rate schedules or amendments may not be implemented without departmental approval.

(iii) The transportation rate schedules submitted for approval must be complete and contain the current department established rates, the locally established rates, or the locally prevailing rates for each transportation service for which the district is required to pay.

(3) Failure to obtain the approval required by this subdivision may result in the social services district being denied federal and state reimbursement for the expenses related to transporting MA recipients to providers of medical care or services.

(4) On request, a vendor of transportation services must submit pertinent cost data, which is available to the vendor, to the department or the social services district. The department or the social services district may not require a certified cost document if providing such certification will result in additional expense to the vendor. Failure to comply with the requirements of this paragraph may result in the vendor's termination from participation in the MA program.

(5) The department or each social services district for which payment of transportation services is made through the Medicaid Management Information System (MMIS) must adhere to the following requirements in establishing payment rates with vendors of transportation services:

(i) The department or the social services district must select at least one of the following:

- (a) a flat rate for all transportation services provided;
- (b) a base rate for all transportation services provided, plus a mileage charge;
- (c) a flat rate for transportation services within specified areas; or
- (d) a mileage rate based on distance.

(ii) The department or the social services district may establish with vendors a reduced rate for any of the following:

- (a) transportation of additional persons;
- (b) transportation of persons traveling to and from day treatment or continuing treatment programs; and
- (c) transportation of persons for purposes of obtaining regularly recurring medical care and services.

(iii) The department or the social services district may establish an additional rate for any of the following:

(a) other transportation costs, limited to the costs of meals, lodging and transportation attendants. Such costs must be approved by the department before the social services district may establish the additional rate; and

(b) bridge and road tolls.

(6) Rates established by the department will be deemed part of all applicable social services district medical transportation plans.

Volume: C

Attachment B-2: 92 ADM-21, "Transportation for Medical Care and Services: 18 NYCRR 505.10"

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| ADMINISTRATIVE DIRECTIVE |
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TO: Commissioners of
    Social Services

TRANSMITTAL: 92 ADM-21

DIVISION: Medical
           Assistance

DATE: June 2, 1992

SUBJECT: Transportation for Medical Care
         and Services: 18 NYCRR 505.10
    
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SUGGESTED
DISTRIBUTION: Medical Assistance Staff
              Child/Teen Health Plan Staff
              Transportation Unit Staff
              Staff Development Coordinators

CONTACT
PERSON: For additional information contact Loretta Grose
        at 1-800-342-3715, extension 35873 (OA USERID
        AW0680).

ATTACHMENTS: There are no attachments to this Administrative
              Directive.
    
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FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
81 INF-27		505.10	20.3(d)		89 LCM-193
82 ADM-40		360-7.7	34.3(f)		89 LCM-42
82 INF-28			365-a.2(j)		89 LCM-43
86 INF-16			365-b, 368-a		90 LCM-51
87 ADM-39			14 NYCRR		90 LCM-88
87 INF-50, 67			579.5(a)(1);		
90 ADM-1			585.10, .13a		

DSS-296EL (REV. 9/89)

I. Purpose

This Directive informs social services district staff of revisions to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR) 505.10, "Transportation for Medical Care and Services".

This ADM outlines the programmatic implications of the revisions as follows:

- A. Definition of Terminology;
- B. Clarification of Existing Medical Assistance Transportation Policy;
- C. Conformity of State Regulation with Federal Policy;
- D. Licensure Requirements of Transportation Providers;
- E. Prior Authorization of Ambulance Transportation Involving Persons Covered Under Medicare Part B;
- F. Qualified Orderers of Ambulance and Ambulette Transportation;
- G. Changes Requested by Social Services Districts and Other Sources; and,
- H. Medical Transportation Expenditure Claiming Procedures

II. Background

The previous version of 18 NYCRR 505.10 was last amended in 1981. Since that time, changes in the Medical Assistance (MA) program, as well as new licensure requirements for transportation vendors, resulted in various departmental policy statements which clarified the scope and intent of this regulation. Additionally, several court cases have broadened the effect of this regulation beyond its original intent. The revised regulation clearly defines the purpose and range of transportation under the MA program.

III. Program Implications

A. Definition of Terminology

Certain terms which are commonly used in the MA transportation program are now defined in 18 NYCRR 505.10, as follows:

1. Ambulance. An ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.
2. Ambulance Service. A certified ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.
3. Emergency Ambulance Transportation. Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening, or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.
4. Non-Emergency Ambulance Transportation. Non-emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation in a recumbent position.
5. Emergency Medical Services. Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.
6. Ambulette. An ambulette, or invalid coach, means a special-purpose vehicle, designed and equipped to provide non-emergency care, that has either wheelchair-carrying capacity or the ability to carry disabled individuals.
7. Ambulette Service. An ambulette service means an individual, partnership, association, corporation, or any other legal entity which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care. An ambulette service provides the invalid, infirm or disabled with personal assistance entering and exiting their residences, the ambulette, and a facility which provides medical care.

8. Prior Authorization. Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.
9. Prior Authorization Official. Prior authorization official means the department, a social services district, or their designated agents.
10. Conditional Liability. Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.
11. Common Medical Marketing Area. Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.
12. Community. Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.
13. Locally Established Rate. Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.
14. Locally Prevailing Rate. Locally prevailing rate means a rate for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish rates for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.
15. Ordering Practitioner. Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.

16. Day Treatment Program or Continuing Treatment Program. Day treatment program or continuing treatment program means a planned combination of diagnostic, treatment and rehabilitative services certified by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.
17. Transportation Attendant. Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.
18. Transportation Expenses. Transportation expenses means:
 - i. the costs of transportation services; and
 - ii. the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.
19. Transportation Services. Transportation services means:
 - i. transportation by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the recipient's medical condition; and
 - ii. a transportation attendant to accompany the MA recipient, if necessary. Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.
20. Vendor. Vendor means a lawfully authorized provider of transportation services who is either enrolled in the MA program pursuant to Part 504 of this Title or authorized to receive payment for transportation services directly from a social services district or other agent designated by the department. The term vendor does not mean an MA recipient or other individual who transports an MA recipient by means of a private vehicle.
21. Undue Financial Hardship. Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

B. Clarification of Existing Medical Assistance Transportation Policy

Section 505.10 provides clarification of current policy for the authorization and payment of MA transportation as follows:

1. The transportation must be provided to an MA recipient.

Example 1: The parent of a hospitalized child, who is receiving MA, is required to go to the hospital for periodic consultations regarding the scope of the child's on-going medical care. The parent's transportation expenses for these medical consultations may be reimbursable under the MA program (based on medical necessity) only if the parent is an MA recipient. If the parent is not a recipient of MA, the transportation expenses are not covered. (However, when a child travels to medical care and services, an attendant is required. It is expected that the parent or guardian of the child will act as attendant. In these situations, the costs of transportation, lodging and meals of the parent or guardian may be reimbursable regardless of the parent or guardian's MA eligibility.)

2. The transportation must be made to or from a necessary care or service which may be paid for under the MA program.

Example 1: An MA recipient requests reimbursement for transportation expenses to an Alcoholics Anonymous meeting or some other self-help group. Reimbursement for transportation expenses should not be authorized as these programs are not paid for under the MA program.

Example 2: A physician has ordered that it is medically necessary for a 55 year old developmentally disabled MA recipient to attend a sheltered workshop program in order for the recipient to maintain physical and mental health. The physician has further ordered that it is medically necessary for the MA recipient to travel by ambulette. Even though a physician has ordered this program and specified the mode of transportation, transportation should not be authorized since a sheltered workshop program is not a service covered under the MA program.

Example 3: A young, chronically-ill mother of two children is residing in a long-term-care facility. This MA recipient's attending physician has approved a home visit for the recipient and included this order in the recipient's therapeutic plan of care. This transportation home should not be authorized since the recipient is not being transported to an MA covered service.

Example 4: A 25 year old developmentally disabled Intermediate Care Facility (ICF) resident is ordered by the ICF's attending physician to participate in a summer camp program. This transportation should not be authorized since a summer camp program is not a service covered under Medicaid.

Example 5: An MA recipient has an appointment with a physician who has not been excluded from enrollment in the MA program, but who has voluntarily chosen not to enroll as an MA provider. Transportation to this appointment can be authorized since physician services are covered under the MA program.

3. Payment will be made only for the least expensive available mode of transportation. The least expensive available mode of transportation must be suitable to the MA recipient's needs as determined by the prior authorization official.

Example 1: An MA recipient has access to a bus line and is physically able to use a bus to travel to necessary medical care and services. The prior authorization official has determined that a bus token(s) is less expensive than private vehicle mileage reimbursement. However, the MA recipient wishes to use a private vehicle. Even though the recipient prefers to use a private car the local social services district can limit reimbursement to a bus token(s). No reimbursement should be made if the bus is not used.

4. Payment will be made to a vendor only for services provided where an MA recipient is actually being transported in the vehicle. Payment will not be available for non-passenger occupied time.

Example 1: An ambulette arrives at a recipient's home for a scheduled appointment. The recipient is not at home; therefore, no trip is made. The vendor should not be reimbursed for this service since the MA recipient was not transported in the vehicle.

Example 2: An ambulette arrives at a physician's office to pick up a recipient and return the recipient to the recipient's home. The pick-up is scheduled for 1:00 P.M. The recipient does not leave the physician's office until 1:20 P.M. The ambulette company should not be reimbursed an extra amount for this additional 20 minutes waiting time since the MA recipient was not in the vehicle.

During some long-distance trips, it may be appropriate for the vendor to wait for the recipient rather than return to the vendor's base of operation. Social services districts may choose to establish an enhanced base rate for this type of trip, but no specific fee should be designated for waiting time.

5. Transportation should take place within the common medical marketing area, which means the geographic area from which a community customarily obtains its medical care and services. While recipients may exercise freedom of choice in the selection of medical care and service providers, this does not mean that the local social services district must pay for transportation to medical care and service outside the common medical marketing area when the same care and service is available locally.

When authorizing long-distance transportation social services districts must ensure that the medical care and services required by the recipient are not readily available within the recipient's common medical marketing area. The appropriateness of reimbursement for long-distance transportation should be decided by the prior authorization official after a careful consideration of relevant factors such as location of service and recipient, medical need, recipient's personal circumstances and continuity of medical care.

Example 1: An MA recipient residing in Albany wishes to consult a medical provider located in Syracuse, which is outside the recipient's common medical marketing area. If this same type of provider is available within the Albany area, the prior authorization official may, after consideration of all criteria set forth in section 505.10(d)(7), deny reimbursement for transportation to the medical provider located in Syracuse. In this instance, medical care and services are available within the recipient's common medical marketing area; therefore, payment for transportation outside the area is not essential in order for the recipient to obtain needed medical care. If the recipient chooses to go to the out of area medical provider, no transportation reimbursement should be provided as appropriate medical care within the common medical marketing area has been assured.

Example 2: A pregnant woman, who changes residence from one social services district to another, may need to consult with her original physician in her former district of residence for a period of time before an

adequate transfer of care to a new local provider can be accomplished. Reimbursement for transportation to the out of area physician could be provided for as long a period as consultation with this physician is medically necessary.

C. Conformity of State Regulation with Federal Policy

The Code of Federal Regulations (42 CFR 431.53) requires states participating in the Medicaid program to assure necessary transportation to and from providers of medical care and services which are covered under the states' Medicaid programs. Assuring transportation does not necessarily mean payment for transportation. This federal requirement to assure necessary transportation can be met in a variety of ways, including:

1. The use of transportation services which are ordinarily made available to other persons in the community without charge;
2. The use of volunteer services;
3. Payment to a vendor of transportation services; or,
4. Reimbursement to MA recipients for the use of a private vehicle or mass transportation.

Social services districts can reasonably assume that recipients have some form of transportation available to them for their usual activities of daily living. If a recipient has access to and can make use of the mode of transportation generally used for the usual activities of daily living (such as shopping, recreation, worship services), the recipient should use this mode of transportation to travel to medical appointments. Reimbursement for this mode of transportation does not have to be made. The prior authorization official may authorize payment, however, where the failure to do so would cause the recipient undue financial hardship. If the recipient's normal mode of transportation is available, reimbursement is not necessary for transportation to occasional medical treatment.

Example 1: A rural county resident regularly travels 25 miles one way in her personal vehicle to the county seat in order to shop for food, clothes, and other household items. Reimbursement for occasional transportation to the same city for medical appointments can be denied.

Example 2: An ambulatory individual living in a city resides five blocks from a bus route which interconnects with other bus routes throughout the city. When the individual must travel to the site of a medical practitioner which is in the catchment area of the bus routes, the district can reasonably expect the individual to use the bus and can deny reimbursement for the cost of the token.

Example 3: A department in a rural county provides van transportation of recipients to a major medical center in a neighboring county on Tuesdays and Fridays of each week. For non-urgent medical appointments to the center, the department can expect recipients to schedule appointments for and use the van on Tuesdays or Fridays. Reimbursement for personal vehicle mileage to the van pickup site can be denied.

An MA recipient may use a private vehicle or mass transit for the usual activities of daily living. Reimbursement may be made for these modes of transportation when the use of these modes without reimbursement would constitute an undue financial hardship for the MA recipient. The prior authorization official must decide whether or not to reimburse for these situations on a case by case basis. Reimbursement for mileage in a private vehicle, when authorized, is assumed to be round-trip even if the MA recipient does not return with the driver to the origin point but remains in a medical facility.

Example 4: An MA recipient, diagnosed with a short-term illness requires multiple medical visits within a short period of time. The frequency of these visits may provide a reason for the social services district to reimburse the MA recipient for transportation expenses.

Example 5: A child with an unusual heart problem, residing in the city of Buffalo, may need to access medical services at a New York City hospital specializing in children's diseases. Although located outside the recipient's common medical marketing area, the social services district should reimburse for this long-distance transportation if it is necessary to assure appropriate medical care. In this type of circumstance it may be necessary for the MA recipient to access medical care and services located outside the common medical marketing area. When long distance travel is required, the social services district should provide reimbursement as the cost of transportation is excessive.

While a recipient may, in general circumstances, access medical care and services through use of a private vehicle or mass transit, a severe illness may necessitate the use of a higher mode of transport. If a higher mode of transport is required, the recipient would not be expected to assume this cost.

Example 6: An MA recipient is generally able to use the mass transit system for medical appointments and other daily activities. Reimbursement for this MA recipient's transportation is not being paid by the social services district. This recipient suffers a sprained ankle and cannot use the mass transit system. A higher mode of

transport, in this case a taxi, is required. The social services district may wish to reimburse for transportation expenses in this situation as the cost of this higher mode of transport, without reimbursement, may be an undue financial hardship to the recipient.

An elderly recipient, generally driven to medical appointments by a family member, breaks a leg and is now unable to utilize a private vehicle for transportation to necessary medical appointments. An ambulette is necessary and is ordered by the attending physician. The recipient would not be expected to assume the cost of this higher mode of transport. In these cases, social services districts should provide payment for transportation expenses.

Example 7: A mother and her small children who normally take a bus to medical appointments cannot use mass transit due to icy or snowy weather. Reimbursement to this recipient for a safer and more accessible method of transportation (private vehicle or taxi) may be appropriate.

Procedures for denial of transportation reimbursement should be included as part of the social services district's transportation plan.

Recipients who request reimbursement and are denied reimbursement for transportation expenses must be informed of their right to a fair hearing.

The prior authorization official should consider a number of factors when deciding whether or not to authorize reimbursement for a recipient's private transportation expenses. These factors include but are not limited to :

1. Frequency of medical appointments;
2. Distance to be traveled;
3. Continuity of medical care;
4. Medical condition of the recipient;
5. Weather conditions;
6. Availability of the recipient's usual mode of transportation;
7. Undue financial hardship to the recipient if reimbursement is not authorized; and,
8. Any other circumstance which may affect the recipient's ability to access needed medical care and services.

D. Licensure Requirements of Transportation Providers

Section 505.10(d)(6) establishes licensure requirements for transportation providers, as follows:

1. Ambulance services must be certified or registered by the Department of Health and comply with all requirements of that department.

2. Ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission.
3. Taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality.
4. Vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under Article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements.

Payment to vendors will be made only when they meet the above requirements on the date the services are rendered.

E. Prior Authorization of Ambulance Transportation Involving Persons Covered Under Medicare Part B

Chapter 763 of the Laws of 1989 mandated that ambulance providers be paid the full deductible and coinsurance amounts of an approved Medicare Part B claim for the transportation of MA eligible persons who are covered under Medicare Part B. Section 505.10(c)(1) now reflects this legislation. Prior authorization of non-emergency ambulance transportation is not required for ambulance claims in which there is a Medicare Part B approved amount. Approval by Medicare of an ambulance transport will be deemed appropriate approval for MA purposes.

Prior authorization will still be required for non-emergency ambulance transportation for which there is no Medicare Part B coverage.

F. Qualified Orderers of Ambulance and Ambulette Transportation

Section 505.10(c)(4) allows an ordering practitioner who is the MA recipient's attending physician, physician's assistant or nurse practitioner to order non-emergency ambulance transportation. Ambulette transportation may be ordered by an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner designated by the social services district and approved by the Department. If a social services district wishes to include additional ordering provider groups the district must submit such request to the Division of Medical Assistance for approval as part of their social services district's Title XIX Medical Transportation Plan.

G. Changes Requested by Social Services Districts and Other Sources

1. Vendors of transportation services must provide pertinent cost data to a social services district upon request. The request should be for any pertinent cost data which would aid the social services district in containing expenditures or establishing rates. Social services districts may request this data as long as the request does not place an additional financial cost on the vendor. An example of an additional financial cost would be a request for a certified cost document when such a certified cost document does not exist. Additional financial cost does not mean the cost of photocopying financial documents or computer generated printouts of financial documents. These procedures should be readily and inexpensively available to the vendor. Failure to comply with the social services district request may result in the vendor's termination from the MA program.

This provision is not intended to encourage the development of cost-based rates. A variety of factors should be included in the rate setting process.

2. Social services districts must notify applicants for and recipients of MA of the procedures for obtaining prior authorization of transportation services. Several recent court decisions granted recipients retroactive reimbursement for private vehicle transportation costs because these recipients were never notified by the social services district that the potential for MA transportation reimbursement existed. Information regarding the availability of reimbursement for prior authorized private medical transportation expenses is included in the revised client information booklets DSS-4148A and DSS-4148B.

3. A court found that the previous version of Section 505.10 required social services districts to negotiate with vendors in the rate setting process. The use of the term "negotiate" has been eliminated from the language of the regulation. Section 505.10 now permits rates to be established by the local social services official at a level which assures transportation for MA recipients to necessary medical care and services. Negotiation may be included as part of the rate-setting process if the social services district so desires, but negotiation is not required.

H. Medical Transportation Expenditures Claiming Procedures

1. All medical transportation services furnished by an entity to which a direct vendor payment can be made are claimable for reimbursement as program assistance costs.
2. All non-vendor medical transportation payments should be claimed for reimbursement as administrative costs. These non-vendor payments include, but are not limited to, the following:
 - a. reimbursement to recipients for approved medical transportation;
 - b. costs of meals or lodging enroute to and from medical care;
 - c. cost of a transportation attendant to accompany the the recipient, if necessary, and the costs of the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family;
 - d. cost of bus and subway tokens purchased by the social services district for distribution to recipients;
 - e. payments to a party which is not the provider of the transportation services.

IV. Required Action

Social services district staff must follow the provisions of this release in authorizing and making payment for transportation services for MA eligible persons.

Date June 2, 1992

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If any changes in social services district's procedures occur, the social services district must submit these changes in writing to the department for approval and amendment of the social services district's transportation plan.

V. System Implications

None.

VI. Effective Date

The Directive is effective July 1, 1992 retroactive to April 1, 1992.

Jo-Ann A. Costantino
Deputy Commissioner
Division of Medical Assistance

Attachment C: New York City Medical Provider Transportation Ordering Guidelines

Available online at

<http://www.emedny.org/ProviderManuals/Transportation/index.html>

Attachment D: Medicaid Enrollee Fair Hearing Rights

What is a Fair Hearing?

A Fair Hearing is a chance for you to tell an Administrative Law Judge from the New York State Office of Temporary and Disability Assistance, Office of Administrative Hearings, why you think a decision about your case made by a local social services agency is wrong. The Office of Temporary and Disability Assistance will then issue a written decision which will state whether the local agency's decision was right or wrong. The written decision may order the local agency to correct your case.

Request a Fair Hearing

There are several ways to request a fair hearing. You may submit your request online, by U.S. Mail, by telephone or by fax.

Request an Adjournment or Reopening

If you cannot appear at a hearing that has been scheduled but hasn't been held yet, you may request that it be adjourned (postponed) to another date. You may submit your request for an adjournment online, by U.S. Mail, by telephone or by fax.

If the hearing date has already passed and you didn't attend the hearing, under some limited circumstances, you may be able to have the hearing rescheduled.

Get more information about adjourning or reopening a fair hearing.

If you no longer need a hearing that you have requested, you may let us know online, by U.S. Mail, by telephone or by fax.

Get more information about cancelling (withdrawing) a fair hearing.

If you have received a fair hearing decision that says that your local agency should do something and you believe that they haven't done it, you may submit a Compliance Complaint to us. You may do this online, by U.S. Mail, by telephone or by fax.

Get more information about submitting a Compliance Complaint.

The Office of Administrative Hearings publishes all of its Fair Hearing decisions on the Internet. These decisions have all personal and confidential information removed. If you want to look at old decisions or find other decisions whose facts are similar to yours, you may search this archive.

Search the Fair Hearing Decision Archive.

For all other issues, including inquiries or complaints regarding a specific fair hearing decision, obtaining an additional copy of a decision, or requests to amend a decision and/or reopen a hearing, you may contact the Office of Administrative Hearings at:

Office of Temporary and Disability Assistance
Office of Administrative Hearings
PO BOX 1930
Albany, N.Y. 12201-1930

Fax: 1 (518) 473-6735
Phone: 1 (518) 474-8781
Toll Free in NYS 1 (800) 342-3334

For Hearing Impaired, TTY phone number: 1 (877) 502-6155

Source: <http://otda.ny.gov/oah/default.asp>
(Retrieved 8/18/2010)

Attachment E: Medicaid Enrollees, Users and Trips Data

Chart 1

New York City Boroughs	Total Enrollees	Enrollees Participating in a Managed Care Plan	Fee-for-Service Transportation: Responsibility of Transportation Manager	
			Enrollees Eligible for Fee for Service Transportation	Non-emergency One Way Trips Ordered by Practitioners/Facilities Located in Borough ¹
Bronx	544,465	458,551	85,914	736,414
Brooklyn	785,901	708,066	77,835	2,392,246
Manhattan	300,235	249,268	50,967	1,145,401
Queens	532,002	499,370	32,632	1,118,690
Staten Island	76,382	67,061	9,321	366,891
Total	2,238,985	1,982,317	256,668	5,759,642

¹Total Enrollees and Total Participating in a Managed Care Plan are as of November 2010; Total Non-emergency One –Way Trips are for Calendar Year 2009. Trips include nonemergency ambulance, ambulette and livery. There are additional trips for public transit which are not counted. The Department does not have any count of public transit trips.

Chart 2

Nonemergency Trips Ordered by Medical Practitioners and Facilities Based Upon the Location (Within Each Borough) of the Practitioner or Facility		
Calendar Year 2009		
Borough		Total
Bronx	Ambulance	54,833
	Ambulette	630,340
	Day Program	31,580
	NYC Livery	15,276
	Upstate Taxi	4,385
Bronx Total		736,414
Brooklyn	Ambulance	98,143
	Ambulette	2,020,542
	Day Program	65,777
	NYC Livery	191,620
	Upstate Taxi	16,164
Brooklyn Total		2,392,246
Manhattan	Ambulance	103,768
	Ambulette	941,791
	Day Program	27,790
	NYC Livery	60,194
	Upstate Taxi	11,858
Manhattan Total		1,145,401
Queens	Ambulance	82,998
	Ambulette	951,898
	Day Program	57,929
	NYC Livery	23,520
	Upstate Taxi	2,345
Queens Total		1,118,690
Staten Island	Ambulance	56,428
	Ambulette	287,557
	Day Program	15,816
	NYC Livery	6,979
	Upstate Taxi	111
Staten Island Total		366,891
Grand Total		5,759,642

Chart 3

**Number of Unduplicated Users of Fee for Service Transportation
by New York City Borough
With Percent of Total
Calendar Year 2009**

Borough	Unduplicated Users of Fee for Service Transportation	% of Total
BRONX	38,425	22.2%
BROOKLYN	67,701	39.1%
MANHATTAN	24,935	14.4%
QUEENS	36,745	21.2%
STATEN ISLAND	5,535	3.2%
TOTAL	173,341	N/A

Chart 4

**Number of Medicaid Trips by New York City Borough
With Percent of Total
Calendar Year 2009**

Borough	One Way Trips	% of Total
BRONX	1,010,017	14.4%
BROOKLYN	3,321,169	47.2%
MANHATTAN	551,972	7.8%
QUEENS	1,881,438	26.8%
STATEN ISLAND	193,227	2.7%
Other—New York City Enrollees Residing in Long Term Care Facilities Outside New York City	73,970	1.1%
Grand Total---->	7,031,793	N/A

Chart 5

Medicaid Transportation Volume By New York City Borough

A	B	C	D	E	F	G	H	I	
	New York City Determines Eligibility				New York State Determines Eligibility				
New York City Boroughs	Total Enrollees	Enrollees Participating in Managed Care: Transportation Service in Plan Benefits ¹	<i>Subtotal:</i> Enrollees Eligible for Fee for Service Transportation (B-C)	<i>Add Enrollees With No Address:</i> Eligible Fee for Service Transportation	<i>Add Office of Persons With Developmental Disabilities Eligible Fee for Service Transportation</i>	<i>Add Office of Mental Health Eligible Fee for Service Transportation</i>	<i>Add Breast and Cervical Cancer Treatment Program Eligible Fee For Service Transportation</i>	<i>Grand Total:</i> Enrollees Eligible for Fee for Service Transportation (D+E+F+G+H)	
Bronx	544,465	458,551	85,914	18,860	56	899	53	105,782	
Brooklyn	785,901	708,066	77,835	28,846	80	1,297	80	108,138	
Manhattan	300,235	249,268	50,967	11,573	31	496	32	63,099	
Queens	532,002	499,370	32,632	21,105	55	878	59	54,729	
Staten Island	76,382	67,061	9,321	2,930	8	126	8	12,393	
Total	2,238,985	1,982,317	256,668	83,314	230	3,696	232	344,140	

¹Managed care transportation services will be transitioned from the scope of benefits currently offered to enrollees covered by a Medicaid managed care plan to the contractor, upon full implementation of the Medicaid Redesign Team transportation initiative.

*Determination of Borough Assignment of Enrollees with No Address (Column E) and NYS Determined Eligibles (Columns F, G, and H):

The Department's **Total Count** of the Enrollees with No Address (Column E) and the **Total Count** of the NYS Determined Eligible Groups (Columns F, G, and H) are accurate. In order to assign these persons to individual boroughs, the Department used the same percentage of Total Enrollees by Borough to Total Enrollees (Column B).

Attachment F: Current Transportation Forms: Livery, Ambulette and Non-emergency Ambulance Medicaid Transportation Prior Approval, and Transportation Prior Approval

LIVERY, AMBULETTE & NON-EMERGENCY AMBULANCE SERVICES
MEDICAID TRANSPORTATION PRIOR APPROVAL FORM

Patient Name _____ Date of Birth _____ Sex _____

Address _____

Medicaid No.: _____ Social Security Number _____ - _____ - _____

1. (a) List Diagnoses (PRINT): 1) _____ 2) _____ 3) _____
4) _____ 5) _____ 6) _____

(b) Why do these diagnoses justify transportation other than Public Transportation? _____

2. (a) Does the patient use a wheelchair, scooter or portable oxygen? Yes No

(b) Does the patient require personal assistance of another individual to enter or exit a building or vehicle? Yes No

(c) Does patient have a family member or home attendant traveling with him/her? Yes No

3. (a) Is the patient's departure/destination point within his/her CMMA? (see definition under the Certification Statement) Yes No

(b) If not, justify travel outside CMMA _____

4. Respond to this question only if **Non-Emergency Ambulance** is requested.

(a) Does the patient require life-sustaining equipment during transport? Yes No

(b) Does the patient require monitoring by a certified emergency medical technician or paramedic during transport? Yes No

(c) Does the patient need to be transported in a reclining position for:

1) Medical reasons Yes No 2) Psychiatric condition Yes No

(d) Does the patient require use of the vehicle's oxygen during transport? Yes No

5. Indicate the location and the mode of transportation ordered pursuant to the filing of this document. Consult the New York State Department of Health ordering guidelines for definition of each mode of travel.

(a) Location: Travel is within the CMMA Travel is outside the CMMA.

(b) Mode: LIVERY AMBULETTE Non-Emergency AMBULANCE

6. This transportation authorization is from ___/___/___ to ___/___/___. (NOTE: An authorization may cover a one way trip; a six-month period for patients with acute conditions; or twelve months for patients with chronic conditions.)

INSTRUCTIONS:

Updated form is required when authorization period expires or when change in patient's condition results in a higher level of transportation. Form must be retained in medical practitioner's place of business readily retrievable for audit purposes.

CERTIFICATION STATEMENT

I (or the entity) understand that orders for Medicaid-funded travel may result from the completion of this form. I (or the entity) understand and agree to be subject to and bound by all rules, regulations, policies, standards and procedures of the New York State Department of Health, as set forth in Title 18 of the Official Compilation of Rules and Regulations of New York State and other publications of the Department, including Regulation 504.8(2) which requires providers to pay restitution for any direct or indirect monetary damage to the program resulting from improperly or inappropriately ordering services. I (or the entity) certify that the statements made hereon are true, accurate and complete to the best of my knowledge; no material fact has been omitted from this form.

I (or the entity) understand that the Common Medical Market Area (CMMA), as defined by New York State Social Service Regulation 505.10(b)(5), means the geographic area from which a community customarily obtains its medical care and services. This area lies within a five-mile radius of the recipient's residence.

HRA does not intend to limit a recipient's freedom to choose any Medicaid practitioner in the New York City region. Recipients are allowed to receive care and services from any practitioner willing to provide care. However, HRA is not required to pay the transportation expenses of a recipient to accommodate one's free choice when the same medical service is available closer to one's residence. Internal medicine, general and family practice, OB/GYN, pediatric and psychiatric services are considered by HRA to be typically available to Medicaid recipients/patients within the CMMA. This listing is not deemed all-inclusive.

By ordering transportation services for Medicaid recipients/patients traveling outside the CMMA, I (or the entity) certify that the Medicaid recipient/patient requires specialized care not available within the recipient/patient's CMMA, or that failure to maintain the continuity of services with a particular medical provider, although other appropriate care is available to the recipient/patient within the CMMA, is essential to the recipient/patient's physical and mental health, or there is an imminent need to initiate ongoing medical services that may be available within the CMMA but for which there exists a waiting list to receive care.

Physician's Name (PRINT) Physician's Signature Date (____)_____-_____
Telephone # License #

Hospital/Clinic/Inst. Name Medical Practitioner's Address MMIS ID#

Indicate name of nurse/social worker/other person assisting in completing this form.

Name Title (____)_____-_____
Telephone #

NYS MEDICAL ASSISTANCE - TITLE XIX PROGRAM										TRANSPORTATION PRIOR APPROVAL	
1. ORDERING PROVIDER NUMBER		2. NAME ADDRESS				3a. PROC CODE	3b. MODIFIER CODE	4. TRANSPORTATION PROVIDER NUMBER		5. NAME ADDRESS	
6. CLIENT ID	7. BEGIN DATE OF SERVICE		8. END DATE OF SERVICE		9. NUMBER OF UNITS	10. NO. OF DAYS	11. APPT TIME	12. CLIENT NAME		13. DESTINATION	14. ADDRESS
1	M M D D C C Y Y	M M D D C C Y Y									
2	M M D D C C Y Y	M M D D C C Y Y									
3	M M D D C C Y Y	M M D D C C Y Y									
4	M M D D C C Y Y	M M D D C C Y Y									
5	M M D D C C Y Y	M M D D C C Y Y									
6	M M D D C C Y Y	M M D D C C Y Y									
7	M M D D C C Y Y	M M D D C C Y Y									
8	M M D D C C Y Y	M M D D C C Y Y									
9	M M D D C C Y Y	M M D D C C Y Y									
10	M M D D C C Y Y	M M D D C C Y Y									
15. FOR OFFICE USE ONLY										17. DATE	
16. PRINTED NAME										SIGNATURE	
DO NOT STAPLE IN BARCODE AREA										M M D D C C Y Y	

PROOF



CERTIFICATION

Orderer certifies that: I am (or the business entity named on this form is) a qualified orderer enrolled with and authorized to participate in the New York State Medical Assistance Program and in the profession or specialties, if any, required in connection with this transportation prior approval request; I have reviewed this form. I (or the entity) order or cause to be ordered the services itemized in accordance with applicable federal and state laws and regulations; ALL STATEMENTS MADE HEREON ARE TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE; NO MATERIAL FACT HAS BEEN OMITTED FROM THIS FORM; I UNDERSTAND THAT PAYMENT FOR THE ORDERED SERVICES WILL BE FROM FEDERAL, STATE, AND LOCAL PUBLIC FUNDS AND THAT I MAY BE PROSECUTED UNDER APPLICABLE FEDERAL AND STATE LAWS FOR ANY FALSE CLAIMS, STATEMENTS, OR DOCUMENTS, OR CONCEALMENT OF A MATERIAL FACT; all records pertaining to the ordering of these services including all records which are necessary to disclose fully the extent of care, services, and supplies provided to individuals under the New York State Medical Assistance Program will be kept for a period of six years from the date of payment, and as such records and information regarding this ordered service shall be promptly furnished upon request to the local or State Department of Health, the State Medicaid Fraud Control Unit, or the Secretary of the Department of Health and Human Services; there has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex, and religion; I agree (or the entity agrees) to comply with the requirements of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to accept the data on this form as original evidence of services ordered.

By making this prior approval request I understand and agree that I (or the entity) shall be subject to and bound by all rules, regulations, policies, standards, fee codes, and procedures of the New York State Department of Health as set forth in Title 18 of the Official Compilation of Codes, Rules, and Regulations of New York State and other publications of the Department, including Regulation 504.8(2) which requires providers to pay restitution for any direct or indirect monetary damage to the program resulting from improperly or inappropriately ordering services, the Medicaid Management Information System Provider Manuals and other official bulletins of the Department. I understand and agree that I (or the entity) shall be subject to and shall accept, subject to due process of law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or the entity's) past, present, or future status in the Medicaid program and/or imposing any duly considered sanction or penalty.

I understand that my signature on the face hereof incorporates the above certifications and attests to their truth.

Attachment G Transmittal Form

Transmittal Form
NYS Medicaid Transportation Management Initiative – New York City
FAU #1103

Bidder Full Corporate Name: _____

Corporate Address: _____

FEIN: _____ DUNS Number: _____

Type of Legal Business Entity: _____

Contact Person Information:

Name: _____

Title: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

Attestations (check ALL boxes signifying agreement):

- I certify that the above named bidder accepts the contract terms and conditions contained in this Funding Availability Solicitation (FAS), including any exhibits and attachments, and has received and acknowledges all Department amendments to the FAS.
- I certify that the above named bidder is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department.

Use of Subcontractors Attestation (check only one):

- I certify that the proposal submitted by the above named bidder proposes to utilize the services of a subcontractor(s). Attached to this Transmittal Form is a list of subcontractors and a subcontractor summary for each. The summary document for each includes the information detailed in Section D.4.1. Subsection 4; **OR**
- I certify that the proposal submitted by the above named bidder does not propose to utilize the services of any subcontractor.

Conflict of Interest Attestation (check only one):

- I certify that there are business relationships and/or ownership interests for the above name bidder that may represent a conflict of interest for the organization as bidder, as described in Section D.3. of the FAS. Attached to this letter is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided and the bidder's knowledge and full compliance with the NYS Public Officer's Law, as amended, including but not limited to, Sections 73 and 74; **OR**
- I certify that no conflict of interest relationship exists for the above named bidder.

Signature of Individual Authorized to Bind the Above Named Organization In a Contract with NYS:

_____ Date: _____

Print Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

Attachment H BID FORM

(Next Page)

Attachment H

**NEW YORK STATE
DEPARTMENT OF HEALTH**

BID FORM

PROCUREMENT TITLE: New York State Medicaid Transportation Management Initiative-New York City

FAU #1103

Bidder Name: _____

Bidder Address: _____

Bidder Fed ID No: _____

A. Responders to the FAS must enter bid amounts for each of the Volume Level Categories (A, B, C, D, E) for the number of Medicaid enrollees eligible to receive fee-for-service (FFS) transportation, as indicated in the chart below:

Volume Level Category	Medicaid Enrollees Eligible to Receive FFS Transportation	Per Enrollee, Per Month Cost Bid
A	0 to 100,000	
B	100,001 to 200,000	
C	200,001 to 400,000	
D	400,001 to 1,000,000	
E	1,000,001 and above	

While the fee schedule included in the Bid Form is expected to be used as the basis for the resultant contract, in the best interest of the State all bids are subject to subsequent Department of Health negotiation with the successful respondent.

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

Attachment I

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section E.9., Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

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

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

Attachment J

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:

Submitted with proposal:

1. Bidders Proposed M/WBE Utilization Plan

Submitted by winning bidder(s):

2. Minority Owned Business Enterprise Information
3. Women Owned Business Enterprise Information
4. Subcontracting Utilization Plan
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

Bidder Name:	
RFP Title:	RFP Number

Description of Plan to Meet M/WBE Goals

PROJECTED M/WBE USAGE

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

New York State Department of Health MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION

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

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

New York State Department of Health 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 PLAN

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: _____ Not Certified: _____	
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
STAFF							
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

(Name and Title)

Date

Attachment K SALES TAX FORMS CA-220 AND TD-220

An electronic fill-in version of the *NYS Taxation and Finance Contractor Certification Form ST-220-TD*, can be found at:

http://www.tax.state.ny.us/forms/form_number_order_st_y.htm

An electronic fill-in version of the *NYS Taxation and Finance Contractor Certification Form ST-220-CA* can be found at:

http://www.tax.state.ny.us/forms/form_number_order_st_y.htm

Attachment L State Consultant Services Form A

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	Agency Code 12000
Contractor Name:	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)

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 15th 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, 11th 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 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.

Attachment M State Consultant Services Form B

**State Consultant Services
FORM B**

OSC Use Only
Reporting Code:
Category Code:

Contractor's Annual Employment Report
Report Period: April 1, ____ to March 31, ____

New York State Department of Health	Agency Code 12000
Contract Number:	
Contract Start Date: / /	Contract End Date: / /
Contractor Name:	
Contractor Address:	
Description of Services Being Provided:	

Scope of Contract (Chose one that best fits):

Analysis	Evaluation	Research
Training	Data Processing	Computer Programming
Other IT Consulting	Engineering	Architect Services
Surveying	Environmental Services	Health Services
Mental Health Services	Accounting	Auditing
Paralegal	Legal	Other Consulting

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)

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 15th of each year to the following three addresses:

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

Attachment N SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):	NYS COMPTROLLER'S NUMBER:
	ORIGINATING AGENCY CODE:12000
CONTRACTOR (Name and Address):	TYPE OF PROGRAM(S):
CHARITIES REGISTRATION NUMBER:	CONTRACT TERM
	FROM:
	TO:
CONTRACTOR HAS () HAS NOT () TIMELY FILED WITH THE ATTORNEY GENERAL'S CHARITIES BUREAU ALL REQUIRED PERIODIC OR ANNUAL WRITTEN REPORTS	FUNDING AMOUNT FOR CONTRACT TERM:
FEDERAL TAX IDENTIFICATION NUMBER:	
MUNICIPALITY NO. (if applicable):	
STATUS:	
CONTRACTOR IS () IS NOT () A SECTARIAN ENTITY	
CONTRACTOR IS () IS NOT () A NOT-FOR-PROFIT ORGANIZATION	() IF MARKED HERE, THIS CONTRACT'S RENEWABLE FOR _ ADDITIONAL ONE-YEAR PERIOD(S) AT THE SOLE OPTION OF THE STATE AND SUBJECT TO APPROVAL OF THE OFFICE OF THE STATE COMPTROLLER.
CONTRACTOR IS () IS NOT () A N Y STATE BUSINESS ENTERPRISE	
OPENING DATE:	_____ BID

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

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

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 complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment:

Contract Manager

Medicaid Transportation Policy Unit
New York State Department of Health
Office of Health Insurance Programs
Bureau of Administration & Transportation Policy
Division of Financial Planning and Policy
Corning Tower, Empire State Plaza
Albany, NY 12237

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

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

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

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

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 therefore, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such

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

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

IV. Proof of Coverage

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

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

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

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

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

APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

- 1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
- 2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
- 3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).
- 4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction,

alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **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 Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

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

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

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

APPENDIX B: FUNDING AVAILABILITY SOLICITATION

To be added upon award

APPENDIX C: Proposal

To be added upon contract award

APPENDIX D: GENERAL SPECIFICATION

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

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

- T. **Provisions Upon Default**
 - 1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor
 - 2. If, in the judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable

compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. 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 nonprocurement 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 Nonprocurement 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 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the STATE's designated payment office address included in this AGREEMENT; and
 - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting - or via fax at (518) 474-8030 or (518) 473-8808; and
 - c. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

BB. Provisions Related to New York State Procurement Lobbying Law

- 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 E: WORKER'S COMPENSATION AND DISABILITY BENEFITS

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

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

DB-155 – Certificate of Disability Benefits Self-Insurance

APPENDIX G: NOTICES

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

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

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

State of New York Department of Health

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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

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

APPENDIX H: HIPAA CONFIDENTIALITY

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

I. Definitions. For purposes of this Appendix H of this AGREEMENT:

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

II. Obligations and Activities of Business Associate:

- A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
- B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT.
- C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
- D. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
 - 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
 5. Contact procedures for Covered Program to ask questions or learn additional information.
- E. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Program agrees to the same restrictions and conditions that apply through this AGREEMENT to Business Associate with respect to such information.
 - F. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
 - G. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
 - H. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
 - I. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
 - J. Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
 - K. Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.

III. Permitted Uses and Disclosures by Business Associate

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

IV. Term and Termination

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

return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this AGREEMENT to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

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

VI. Miscellaneous

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

- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this AGREEMENT, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

Agency Code 12000

APPENDIX X: MODIFICATION AGREEMENT FORM

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 modification (complete only items being modified):

\$ _____ From / / to / / .

This will result in new contract terms of:

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

Signature Page for:

Contract Number: _____ Contractor: _____

Amendment Number: X-_____

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: _____