

NEW YORK STATE DEPARTMENT OF HEALTH

A Request for Proposals for

Office of Health Insurance Programs  
Division of Financial Planning and Policy

FAU No. 1106141021

Cost Study and Implementation of Revised Reimbursement Methodology for the  
Preschool/School Supportive Health Services Program (SSHSP)

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Schedule of Key Events

RFP Release Date	July 26, 2011
Written Questions Due	August 2, 2011
Response to Written Questions	On or about August 16, 2011
Proposal Due Date	August 30, 2011, 3:00 PM ET
Anticipated Start Date	On or about September 22, 2011

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**DESIGNATED CONTACTS:**

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

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

*Permissible Subject Matter Contacts:*

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

- Submission of Written Proposals or Bids:***
- Submission of Written Questions:***
- Negotiation of Contract Terms after Award:***

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

*For further information regarding these statutory provisions, see the Lobbying Statute summary in Section E, 9 of this solicitation.*

## **Cost Study and Implementation of Revised Reimbursement Methodology for the Preschool/School Supportive Health Services Program (SSHSP)**

### **A. INTRODUCTION**

The New York State Department of Health (Department), as the single State agency for the Medicaid program, is seeking a contractor to conduct a cost study to determine actual direct and indirect costs incurred by public school districts, § 4201 schools, and counties for medical care, services, and supplies, including related special education services and special transportation, furnished to children with disabilities. In addition, this contractor will study and implement a revised reimbursement methodology for schools districts, §4201 schools and counties for services delivered under the Preschool/School Supportive Health Services Program (collectively, "SSHSP"). Under the SSHSP, medically necessary school supportive health services are delivered to eligible preschool and school-age children with disabilities who also have an Individualized Education Program (IEP). Depending on the cost study results, consideration may also be given to enhancing the services delivered under this program.

The Department administers the School Supportive Health Services Program in conjunction with the New York State Education Department (SED). A 1988 amendment to the Social Security Act provided statutory authority for the SSHSP by allowing Medicaid coverage of medically necessary services included in the Individualized Education Programs of students with disabilities. Following a series of federal audits of SSHSP, a new State Plan amendment was developed and approved by the Centers for Medicare and Medicaid Services (CMS) on April 26, 2010, retroactive to September 1, 2009. The approved State Plan Amendment (SPA), #09-61, used a benchmark of 75% of the 2010 Medicare rates for the mid-Hudson region to establish reimbursement rates and a new, encounter-based payment methodology for SSHSP services.

The selected contractor will complete a cost study to determine whether current reimbursement for preschool and school supportive health services furnished in school districts, § 4201 schools, and counties in New York reflects the actual cost of service delivery. In addition, the selected contractor will assist the Department in implementing a Certified Public Expenditure (CPE) reimbursement model. These activities will be conducted with input provided by the Department and the State Education Department, and in conformance with all applicable federal and State Medicaid requirements.

The contractor's recommendations will be formulated with input provided by the Department and SED as appropriate, and in conformance with the following principles that the Department has established for its reimbursement methodologies:

- Be straightforward and transparent
- Buy value (result in high quality and cost-effective care)
- Encourage care in the least restrictive setting by the most qualified provider
- Be consistent with State budget constraints
- Reinforce planning and policy priorities
- Comply with federal and State statute and regulations, as appropriate
- Be updated periodically

Payment to the vendor for all costs associated with the development of necessary State Plan amendments or other communication, development and implementation of the cost study, and implementation of a revised reimbursement methodology using Certified Public Expenditures (CPE) in school districts, § 4201 schools and counties in the state is conditional, and is based upon receiving approval from CMS. The Department will not reimburse the vendor for any expenses if CMS does not accept the proposed plan. **Payment to the vendor will be remitted only upon receipt of funds from CMS.**

Federal law at 42 CFR § 433.51 provides that funds from units of government may be considered as the State's share in claiming federal financial participation (FFP) if certain conditions are met. The Department requires assistance in implementing this approach for the SSHSP. The State will retain the first \$100 million in anticipated increased federal reimbursement for each annual contract period. Payment for the services rendered will be based on a percentage of increased federal revenue as delineated in the resultant contract for each annual contract period above the initial amount to be retained by the State.

## **B. BACKGROUND**

The School Supportive Health Services Program is authorized under a 1988 amendment to § 1903 of subdivision (c) of the Social Security Act. New York State implemented the change in federal law in 1989 by amending Sections 368-d and 368-e of the Social Services Law to authorize payments of Medicaid funds for SSHSP services. SSHSP assists school districts, counties, and § 4201 schools in obtaining Medicaid reimbursement for special education services provided to students with disabilities. Certain special education services provided to school-age students from 5 years of age up to their 21<sup>st</sup> birthday and to preschool students ages three through four years may be covered under SSHSP if all Medicaid requirements are met.

### **Audits**

Following statewide federal audits of the SSHSP that began in 2001 as a result of litigation commenced by a whistleblower under the False Claims Act, New York State reached a settlement with the federal government in July 2009.

### **New State Plan Amendment**

A new State Plan Amendment (SPA) was also required as part of the settlement. SSHSP SPA #09-61 was accepted by CMS on April 26, 2010, retroactive to September 1, 2009. Significant changes included in SPA #09-61 included clarification of provider qualifications and a change in payment methodology from a monthly-based payment system to an encounter-based payment methodology.

### **Covered Services**

The SSHSP is administered by school districts, § 4201 schools, and counties. Medicaid-reimbursable services under New York's SSHSP, for children with disabilities who have an Individualized Education Program (IEP) and are eligible for Medicaid, include:

1. Physical therapy services
2. Occupational therapy services
3. Speech therapy services
4. Psychological evaluations
5. Psychological counseling
6. Skilled nursing services

7. Medical evaluations
8. Medical specialist evaluations
9. Audiological evaluations
10. Special transportation services

#### Medicaid Program Requirements

In order to be Medicaid reimbursable, school supportive health services must be:

- Medically necessary and included in a Medicaid covered service category;
- Included in the State's plan and/or available under Early and Periodic Screening, Diagnosis and Treatment (EPSDT) to children up to age 21;
- Prescribed, ordered or referred by a practitioner acting within his or her scope of practice;
- Included in the student's Individualized Education Program (IEP);
- Provided by qualified professionals under contract with or employed by a school district, a § 4201 school; a county in the State or the City of New York; and
- Furnished in accordance with all requirements of the State Medicaid Program and other pertinent state and federal laws and regulations, including those regarding provider qualifications, comparability of services, freedom of choice and the amount, duration and scope provisions.

The Department has established prices, which were approved by the New York State Division of the Budget, for each of the covered SSHSP services listed on page 5. Under SPA #09-61, rates for all services except for special transportation services were benchmarked at 75% of the 2010 Medicare rates for the mid-Hudson region. Special transportation rates were established based on a statistically valid cost study that was conducted in 1999 and trended forward based on the change in the Consumer Price Index between July 1999 and August 2009. SPA #09-61 includes a provision that a new cost study for special transportation will be conducted. SSHSP billing using the encounter-based methodology began in April 2011.

Under the previous SSHSP SPA, claims were submitted for school supportive health services on a monthly (not encounter) basis as long as a minimum of two services in the particular service area were furnished during the calendar month. The total dollar amounts of claims submitted for SSHSP services for SFY 2006, 2007 and 2008 are included in Table 1 for reference purposes. A separate SPA, #96-41, was in place through June 30, 2010, for school supportive health services targeted case management (TCM) services. This SPA was withdrawn effective July 1, 2010, therefore, SSHSP TCM services provided on or after July 1, 2010 are not eligible for Medicaid reimbursement.

Table 1: SSHSP and PSSHSP Claims by Date of Service (DOS Year)

SSHSP and PSSHSP claims by Date of Service (DOS Year) (per DW on 04-21-11)							
Service	Region (based on County Code)	DOS Year		Values			
		2006		2007		2008	
		# of Claims	Amount Paid	# of Claims	Amount Paid	# of Claims	Amount Paid
SSHSP & PSSHSP Services	NYC	30,322	\$6,765,932	2,599	\$1,084,676	2,767	\$1,164,404
	ROS	555,223	\$212,974,108	386,966	\$162,300,560	422,834	\$179,325,287
<b>SSHSP &amp; PSSHSP Services Total</b>		<b>585,545</b>	<b>\$219,740,040</b>	<b>389,565</b>	<b>\$163,385,236</b>	<b>425,601</b>	<b>\$180,489,691</b>
TCM	NYC	96,611	\$77,578,523	96,583	\$77,194,245	47,533	\$37,199,988
	ROS	149,339	\$44,908,520	127,970	\$36,293,410	92,500	\$23,473,653
<b>TCM Total</b>		<b>245,950</b>	<b>\$122,487,043</b>	<b>224,553</b>	<b>\$113,487,655</b>	<b>140,033</b>	<b>\$60,673,641</b>
Transp.	ROS	76,879	\$14,619,729	32,592	\$6,741,572	47,672	\$9,508,965
	Nassau/Suffolk/Westchester	20,765	\$4,769,148	11,002	\$2,685,077	13,989	\$3,623,950
<b>Transp. Total</b>		<b>97,644</b>	<b>\$19,388,878</b>	<b>43,594</b>	<b>\$9,426,650</b>	<b>61,661</b>	<b>\$13,132,915</b>
<b>Grand Total</b>		<b>929,139</b>	<b>\$361,615,961</b>	<b>657,712</b>	<b>\$286,299,541</b>	<b>627,295</b>	<b>\$254,296,247</b>

The State Education Department’s contractor, the Central New York Regional Information Center (CNYRIC) has developed a software application which is used to convert claims submitted by the school districts and counties to a HIPAA-compliant format. New York City claims are returned to NYC in a HIPAA-compliant format for direct submission to the Medicaid program’s fiscal intermediary, Computer Sciences Corporation (CSC), for payment. For the rest of the State, CNYRIC both formats and submits the claims to CSC. The eMedNY system is used to process Medicaid claims. The Department’s Office of Health Insurance Programs (OHIP) manages the eMedNY system and data from eMedNY are available through OHIP for program and fiscal management purposes.

For more information on the NYS School Supportive Health Services Program, please visit the State Education Department’s website: <http://www.oms.nysed.gov/medicaid/> and click on the Billing and Claiming Guidance tab.

## C. DETAILED SPECIFICATIONS

### 1. Eligible Bidders

This Request for Proposals (RFP) is open to both for-profit and not-for-profit entities. The selected vendor must have a minimum of three (3) years of successful experience using the Certified Public Expenditure (CPE) reimbursement methodology and demonstrate successful implementation of this model in School Supportive Health Services Programs in three (3) other states. Eligible bidders must have a proven methodology for conducting a Random Moment Time Study (RMTS) that is appropriate for SSHSP reporting and can be implemented by September 1, 2011.

Subcontracting is allowed. However, the bidder must provide the full name and address of any organization with which the bidder will subcontract for any services provided in the contract resulting from this RFP. The bidder should also specify the mechanisms for assuring its effective administration of the subcontract. List responsible officers of each subcontractor. List any financial interest the bidder has in the proposed subcontractors. Evidence of a potential subcontractor’s willingness to enter into a subcontractual agreement to provide services detailed in this RFP should be included.

## 2. Performance Requirements

DOH will award a contract through this Request for Proposals (RFP) to an organization qualified to conduct a cost study and assist the Department in implementing an annual cost reconciled and settled model for reimbursement of school supportive health services furnished in school districts, § 4201 school, and counties.

The Department intends to utilize a revised reimbursement methodology to reimburse school districts, § 4201 schools, and counties for school supportive health services furnished to Medicaid-eligible students with disabilities. Bidders must explain how they would conduct a cost study of all school districts, § 4201 schools, and counties (including the City of New York), and, using the encounter-based fee-for-service reimbursement methodology developed under State Plan Amendment #09-61, implement an annual cost reconciled and settled model in which school districts, § 4201 schools, and counties would be required to 1) participate in quarterly Random Moment Time Studies (RMTS) and 2) file annual cost reports in a format to be recommended by the vendor and approved by the Department in consultation with SED. Table 2 provides the number of school districts and counties in the State. All proposed changes to SSHSP reimbursement must be compliant with applicable federal and State Medicaid and Individuals with Disabilities Education Act (IDEA) requirements and meet with CMS' approval where required.

Table 2: Number of School Districts and Counties in New York State

School districts	671
Counties	58 (including NYC)
Total	729

The selected bidder will perform the following specific contract requirements to the satisfaction of the Department:

1. Prepare and submit to the Department a draft implementation plan for conducting the cost study and implementing an annual cost reconciled and settled reimbursement model for review and approval by the Department within 7 days from the date of the contract start date.
2. Prepare a proposed Time Study Implementation Plan for submission by the Department to the Centers for Medicare and Medicaid Services (CMS) for review and approval within two weeks of the contract start date. This proposal will seek to shift to a cost reconciled and settled reimbursement methodology, pursuant to 42 CFR § 433.51 to reimburse school districts, § 4201 schools, and counties for school supportive health services furnished in accordance with applicable federal and State requirements to Medicaid-eligible children with disabilities from age three to 21 years.
3. Assist the Department with any requests for additional information from CMS related to the School Supportive Health Services Program Time Study Implementation Plan referenced above, and assist the Department with preparation of any subsequent State Plan amendments to be submitted to CMS regarding the SSHSP.
4. Within 14 days of the contract start date, submit a transportation cost study design to the Department to be submitted to the Centers for Medicare and Medicaid Services (CMS) for approval, in accordance with the terms of SPA #09-61 (refer to

[http://www.oms.nysed.gov/medicaid/resources/state\\_plan\\_amendment/nys\\_spa\\_09-61.pdf](http://www.oms.nysed.gov/medicaid/resources/state_plan_amendment/nys_spa_09-61.pdf)). The transportation cost study will assess direct and indirect costs within the parameters of OMB circular A-87, to establish new rates for special transportation, and to demonstrate to CMS that the new rates do not exceed actual costs.

5. Within 30 days of contract start date, develop and conduct a statistically valid cost study to determine whether current SSHSP reimbursement rates provide appropriate compensation for medical services furnished under the SSHSP and for special transportation costs. The medical SSHSP services subject to a cost study will include at a minimum physical/speech/occupational therapy, nursing, psychology, audiological evaluations, and physician services.
6. By September 1, 2011, submit to the Department comprehensive reports to demonstrate the impact of potential changes that would result from use of a cost reconciled and settled reimbursement strategy.
7. Provide comprehensive cost study results and analysis to the Department and recommendations for interim SSHSP rates by September 1, 2011.
8. Determine the cost effectiveness of seeking third-party health insurance for school supportive health services, and, contingent on results, assist the Department in developing a State Plan amendment request for submission to CMS.
9. The selected vendor must have a proven methodology for a Random Moment Time Study (RMTS) that is appropriate for SSHSP reporting that can be implemented by September 1, 2011.
10. Ensure that there is a centralized, uniform and CMS-approved system in place to capture RMTS for purposes of quarterly reporting by school districts, § 4201 schools, and counties.
11. Conduct all activities necessary to generate time study results and submit a quarterly report to the Department for submission to CMS no later than the last business day of the month following the end of the quarter. Activities include, but are not limited to: producing RMTS notifications, completing sampled moments, provision of technical assistance for districts with incomplete sampling, provision of ongoing technical assistance to ensure a 90% completion rate of RMTS for participating districts, monitoring compliance for the returned moments, and coding of time study responses and compilation of responses in the format required by CMS.
12. Review and validate cost reports for each school district, § 4201 school, and county on an annual basis by September 30<sup>th</sup>.
13. Conduct an annual audited cost report for each school district, § 4201 school, and county by September 30<sup>th</sup>.
14. Calculate cost settlement amounts for each school district, § 4201 school, and county on an annual basis by September 30<sup>th</sup>.
15. Produce an annual report detailing the cost settlement amount for each school district, § 4201 school, and county by September 30<sup>th</sup>.

16. Ensure accuracy of cost reports submitted by school districts, § 4201 schools, and counties and provide technical assistance as required by these entities.
17. Generate and submit cost settlement reports to the Department that meet applicable federal and State requirements on an annual basis by September 30<sup>th</sup>.
18. Submit all reports in an electronic format.
19. Ensure that school districts, § 4201 schools, and counties have the necessary resources to submit financial data to support CPE claiming.
20. Train appropriate employees and contract staff within school districts, § 4201 schools, and counties, the Department of Health and the State Education Department on the Medicaid Cost Settlement Process including the implementation of the Random Moment Time Study (RMTS). The specific school district and county staff to be trained will be agreed upon by the Department and the State Education Department, with input from the selected vendor. All training materials must be approved by the Department prior to delivering training to external groups. Follow-up assistance to school districts, § 4201 schools, and counties will be provided at no additional cost to the State for the duration of the contract.
21. Train appropriate employees and contract staff within school districts, § 4201 schools, and counties, the Department of Health and the State Education Department on the Medicaid Cost Settlement Process including filing of annual cost reports under the CPE model. All training materials must be approved by the Department prior to delivering training to external groups. Follow-up assistance to school districts, § 4201 schools, and counties will be provided at no additional cost to the State for the duration of the contract.
22. Provide ongoing support and technical assistance to the employees and contract staff involved in the delivery of school supportive health services in school districts, § 4201 schools and counties, including establishing a toll-free statewide telephone number.
23. Make reports available to school districts, § 4201 schools and counties as required to support their school supportive health services programs, quality assurance and internal control activities.
24. Provide training manuals and other written materials as required to support the SSHSP.
25. Meet with Department staff and attend Department-sponsored meetings with external stakeholders in New York State as needed to complete the project.
26. The Department may procure School Based Medicaid Administrative Claiming (MAC) services. The implementation of a random moment time study will support the infrastructure necessary to complete Medicaid Administrative Claiming (MAC). The selected vendor will have the option of assisting the state with the collection, preparation, and claiming of Medicaid Administrative services for the School Based program. A Statement of Work will be required that includes at minimum, a scope of work and cost estimate associated with the project. Payment for the additional services rendered, if any, will be based on a percentage of increased federal revenue for each annual contract period.

27. The Department may procure additional services as needed to comply with externally driven changes to DOH programs and requirements, including any state or federal laws, rules and regulations. Services provided by the vendor could include, but are not limited to, assistance with policy development impact analysis, requirements definition and testing activities that require substantial subject matter expertise derived from experience in other states, other healthcare organizations or participation in federal activities, and revenue optimization and cost avoidance programs for DOH. For each mutually agreed upon service, a Statement of Work will be required that includes at minimum, a scope of work and cost estimate associated with the project. Payment for the additional services rendered, if any, will be based on based on the hourly rate as delineated in the resultant contract. This rate will remain constant throughout the term of the contract.

### **3. Implementation and Administration**

The contractor is expected to begin activities immediately upon contract execution. The contract term is five years. The SSHSP services cost study results and transportation cost study results associated with this contract must be completed no later than September 30, 2011.

#### **Database Development and Maintenance**

The contractor agrees to enter into a data exchange agreement with the Department. Pursuant to that agreement, the Department will provide the contractor with demographic, service and expenditure data appropriate to conduct the analysis in a format determined by the Department in conjunction with the contractor. The contractor must be capable of accepting data including program participant data for utilization of services, eligibility data, and reimbursement rates for program services. The contractor will be responsible for all work related to transferring data from the Department and performing quality assurance activities and providing the Department with reports that assure the accuracy of the transfer.

#### **Reporting**

The contractor will be required to file quarterly progress reports, with an annual progress report to be submitted with the annual vouchers. The quarterly progress reports will detail the work accomplished by the contractor regarding the specific contract performance requirements listed in section C.2 of this RFP. Quarterly progress reports will be due thirty (30) days after the end of the quarter. An annual summary report on all contract activities will be due within forty-five (45) days after each year during the contract period. A final summary report on all contract activities will be due within forty-five (45) days after the contract period.

#### **Quality Assurance**

The contractor must employ a process that follows generally accepted statistical methods. The contractor is responsible for reviewing and assuring the accuracy of all work conducted under this contract. Specific quality assurance measures to be undertaken shall be detailed in the proposal.

#### **Staffing Requirements**

The contractor must assign to the project a full-time contract manager who will be the primary contact with the Department. The contract manager will have the background and expertise to

oversee the requirements of the contract and be available to meet with Department staff in Albany and at other major metropolitan areas within the State.

Information technology staff must be available to facilitate and coordinate the migration of Department data files into the contractor's data system. Any costs associated with the data transfer and migration will be incurred by the contractor. Department information technology staff will not be responsible for work outside of the creation of data files to be used in the migration.

The contractor shall ensure that all staff assigned to the project possesses the required knowledge and experience to complete the specifications of the RFP.

#### Data Security

The contractor will be responsible for maintaining the security of all data files and employ federally approved methods of data encryption to prevent theft of personally identifiable information. The contractor must adhere to all requirements under the Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA) for protection of data, including security, confidentiality and transactions requirements.

#### Contractor Payment

Payment to the vendor for all costs associated with the development of necessary State Plan amendments or other communication, development and implementation of the cost study, and implementation of cost reconciled and settled reimbursement program in school districts, § 4201 schools and counties in the state is conditioned upon receiving approval and funding from CMS. **The Department will not reimburse the vendor for any expenses if CMS does not accept the proposed plan.**

Federal law at 42 CFR § 433.51 provides that funds from units of government may be considered as the State's share in claiming federal financial participation (FFP) if certain conditions are met. The Department requires assistance in implementing this approach for the SSHSP. The State will retain the first \$100 million in anticipated increased federal reimbursement for each annual contract period. Payment for the services rendered will be based on a percentage of increased federal revenue as delineated in the resultant contract for each annual contract period above the initial amount to be retained by the State.

Contractor payment will be made based upon an annual invoice to be submitted upon completion of the annual cost settlement and identification and receipt of additional federal revenue. Annual invoices must be sent to the designated payment office. The invoice must follow the format provided by the Department. Invoices that are submitted without an annual progress report will not be processed for payment.

#### Contract Period

The contract resulting from this RFP is expected to be for a period of five years, with an anticipated contract start date as shown on the cover page of this RFP.

#### 4. Conflict of Interest

Bidders (or any subcontractor) must disclose all business relationships with or ownership

interest in entities including, but not limited to providers of the New York State School Supportive Health Services Program/Part B IDEA services, organizations or trade associations representing such providers in New York State, municipalities and organizations representing such municipalities, or any other organization having a financial interest in the provision of services in the program. In cases where such relationship(s) exist, bidders must describe how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided.

The Department reserves the right to reject any and all bids, at its sole discretion, based on any potential conflict of interest.

## **D. PROPOSAL REQUIREMENTS**

The bidder's compliance to the format prescribed herein, as well as the bidder's response to each specific requirement and question stated in the RFP, will be considered during the evaluation process. In addition, the review team may consider any other relevant information derived from the respondent's current or past employers and the State's and counties' previous experience with the respondent's evaluation and management of reimbursement systems. Application evaluators will not review any material that is submitted above the maximum page limit stated for each section of the proposal.

Proposals should provide a concise but complete description of the bidder's ability to meet the requirements of the RFP. Proposals must be submitted on paper (no electronic submissions) and should be submitted in two distinct parts, **Part 1 – Technical Proposal, and Part 2 – Financial Proposal**, separately sealed and identified with the name of the bidder. These should be packed into a third envelope and sealed and marked accordingly with proper vendor name and address. Proposal packages should be clearly labeled: **Cost Study and Implementation of Revised Reimbursement Methodology for the Preschool/School Supportive Health Services Program (SSHSP) Request for Proposals.**

Each page of the proposal should be numbered consecutively from the beginning of the proposal through all appendices. The narrative should be double spaced, using a 12 point font or larger, with minimum one (1) inch margins all around, and adhere to the maximum page limits.

### **1. Part 1 - Technical Proposal**

The bidder's response must include a transmittal form (Attachment 2) signed by an official authorized to bind the bidder to the provisions of the RFP. The transmittal letter must attest that the bidder has a minimum of three years successful experience with reimbursement using the Certified Public Expenditure (CPE) approach and demonstrate successful implementation of this model in School Supportive Health Services Programs in three (3) other states. The transmittal letter must also disclose any business relationships and / or ownership interest that may represent a conflict of interest for the bidder as described by the Conflict of Interest specifications of Section C.4, or state that no conflict of interest relationship exists. In cases where such a relationship exists, the bidder must submit with the transmittal letter a description of how the potential conflict of interest and / or disclosure of confidential information relating to this contract will be avoided. Should a subcontractor be utilized, the full name and address of any organization with which the bidder will subcontract must be provided.

Responses must address all Technical Proposal requirements. The Technical Proposal consists of narrative descriptions of how the bidder will manage all aspects of the performance requirements of the contract as expressed in **Section C.2 Performance Requirements**. Bidders may provide additional information or recommendations relevant for consideration in the State's determination of award of this contract. Each bidder's Technical Proposal must include separate responses to the following requirements pertaining to format and content:

**a. Transmittal Form**

The bidder should submit the Transmittal Form (Attachment 2) as the cover page of the Technical Proposal, signed by an official authorized to bind the bidder to the provisions of the RFP and the bidder's response. All relevant fields should be completed legibly to assure that the evaluation committee can contact the bidder for clarification of bid contents.

The signed Transmittal Form includes an attestation that the bidder's financial proposal will remain valid for a minimum of 365 days from the Cost Study and Implementation of Revised Reimbursement Methodology for the Preschool/School Supportive Health Services Program (SSHSP) Request for Proposals (RFP) proposal Due Date.

**b. Executive Summary (2 page limit)**

The bidder's Technical Proposal should contain an Executive Summary which describes the bidder's understanding of the performance requirements outlined in Section C of the RFP, how the bidder can assist the Department's effort to assess the current reimbursement methodology, and how the contractor plans to implement a Certified Public Expenditure (CPE) reimbursement methodology for the SSHSP. Include affirmative statements that the bidder has a minimum of three (3) years of successful experience using the Certified Public Expenditure (CPE) reimbursement methodology and demonstrate successful implementation of this model in School Supportive Health Services Programs in three (3) other states; and can begin implementing the project according to the date prescribed in the RFP.

**c. Organizational Background and Experience (8 page limit)**

1. Provide a description of the bidder's organization and its business mission, headquarters and branch office locations, parent and subsidiary organizations, and the relationship between the bidder's organization and any parent or subsidiary. The bidder should include the number of years the organization has been in business and describe its ability to meet the performance requirements of this RFP including technologies, special techniques, skills or abilities of the organization.

2. Describe in detail the bidder's experience performing analysis of health care, disability or educational payment systems. The bidder should include experience with the any of the following: Part B IDEA regulations, NYS School Supportive Health Services Program procedures and requirements, the Medicaid Program, and similar types of service systems, such as those delivered under the auspices of the Office for People with Developmental Disabilities, Office of Mental Health, and State Education Department. All experience referenced should substantiate the bidder's qualifications and capabilities to perform the RFP's specifications described in Section C.

The projects referenced in the descriptions above should be specifically identified and the name of the customer shown, including the name, address and telephone number of the responsible official of the customer, company or agency who may be contacted by the State.

**d. Staffing Background and Experience (7 page limit)**

1. Describe the work experience and other relevant background of key staff who will be assigned to work under the contract resulting from this RFP and provide references that may be contacted by the Department. Include a staffing plan necessary to accomplish the contract requirements.

**e. Project Description (20 page limit)**

The contractor will be responsible for conducting all work necessary to meet the contract performance requirements. Provide a detailed description of the bidder's proposed plan to implement, perform and oversee the following requirements:

- Conduct a cost study to determine actual direct and indirect costs incurred by public school districts, § 4201 schools, and counties for medical care, services, and supplies, including related special education services and special transportation, furnished to children with disabilities.
- Determine whether current reimbursement for preschool and school supportive health services furnished in school districts, § 4201 schools, and counties in New York reflects the actual cost of service delivery.
- Assist the Department in the development of State Plan amendments and follow-up responses as necessary to conduct the SSHSP cost study and implement revised reimbursement methodology.
- Determine the cost effectiveness of seeking third-party health insurance for school supportive health services and, contingent on the results, assist the Department in developing a State Plan amendment request for submission to CMS.
- Implement revised reimbursement methodology for the SSHSP, in conformation with federal CMS and State Medicaid requirements and billing standards, including:
  - Conducting the Random Moment Time Study (RMTS) process in school districts, § 4201 schools, and counties throughout the State
  - Provide training to support cost reporting by each school district, § 4201 school, and county in the State
  - Conducting cost reconciliation and cost settlement for each school district, § 4201 school, and county in the State
  - Conduct training and provide ongoing technical assistance to support the implementation of revised reimbursement methodology for the statewide SSHSP.

The description submitted should include details of the technical and administrative resources to be used to accomplish the requirements of the contract resulting from this RFP such as proposed staffing, database development and maintenance, quality assurance measures, data security, and reporting to the Department. **Sample reports can be submitted and are not subject to formatting restrictions. Sample reports can be up to 15 pages total, must be clearly labeled, and will not count towards the 20 page limit for this section.**

## **2. Part 2 - Financial Proposal**

The bidder should submit a Financial Proposal separate from the Technical Proposal. All relevant fields should be completed legibly to assure that the evaluation committee can contact the bidder for clarification of bid contents.

The Financial Proposal consists of the following completed forms:

- Financial Bid Form
- Vendor Responsibility Attestation
- M/WBE Utilization Plan

Financial Proposals should be accurate, clear and concise. The Department may reject any bid with inaccuracies in the Financial Proposal.

### **a. Financial Bid Form**

The Financial Proposal (complete the Bid Form at Attachment 1) must contain the bidder's proposed rate for conducting activities in response to this RFP.

The financial proposal must contain two proposed rates:

1. The percentage of anticipated increased federal reimbursement as a result of implementing a Certified Public Expenditure methodology for the School Supportive Health Services Program above the initial \$100 million to be retained by the State.
2. An hourly rate for additional services as needed to comply with externally driven changes to DOH programs and requirements, including any state or federal laws, rules and regulations.

### **b. Vendor Responsibility Attestation**

Bidders should also complete and submit the Vendor Responsibility Attestation (Attachment 4).

### **c. M/WBE Utilization Form**

Bidders should complete and submit the M/WBE Utilization Form (Attachment 5).

**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.**

## **3. SELECTION METHOD AND AWARD**

This procurement will result in a contract to complete the contract deliverables and performance requirements as stated in Section C. At the discretion of the Department, any and all proposals may be rejected.

The Commissioner of Health will establish an RFP review team with expertise in the area of both the administration of the New York State Medicaid program and the delivery and coverage of school supportive health services. Proposals deemed by the Department to have met the minimum requirements as outlined in section D.1 will be evaluated by the review team. The review team will evaluate both the respondent'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 respondent's current or past employers and the State's and counties' previous experience with the respondent's evaluation and management of reimbursement systems.

The review team will make recommendations to the Commissioner for selection of a contractor who is determined to be best suited to serve the purposes of Section 368-d and 368-e of Social Services Law and the RFP project specifications.

#### Notification of Award

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

### E. ADMINISTRATIVE

#### 1. Issuing Agency

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

#### 2. Inquiries

All substantive questions should be submitted in writing, via mail or e-mail by the date listed in the Schedule of Key Events to:

Mr. Joseph Zeccolo  
NYS Department of Health  
Office of Health Insurance Programs  
Empire State Plaza  
Corning Tower room 2019  
Albany, NY 12237  
Phone: 518-486-6830  
E-mail: [jxz02@health.state.ny.us](mailto:jxz02@health.state.ny.us)

Questions of a technical nature can be sent by mail or e-mail to the address above. Questions of a technical nature are limited to how to prepare your proposal (e.g., formatting) rather than relating to the substance of the proposal.

Each inquiry should cite the RFP section and paragraph to which it refers. Written questions will be accepted until the date listed in the Schedule of Key Events. Any questions submitted electronically to the e-mail address above must enter the following in the subject line of the e-mail: Cost Study and Implementation of Revised Reimbursement Methodology for the Preschool/School Supportive Health Services Program (SSHSP) Request for Proposals.

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

Prospective bidders should note that all clarification and exceptions, including those relating to the terms and conditions of the contract, are to be raised during the Question and Answer period.

### 3. Submission of Proposals

Interested vendors should submit 2 original and 6 signed copies of their Bid Proposal not later than the date and time listed in the Schedule of Key Events. Originals and copies should be submitted in three-ring binders. It is the bidders' responsibility to see that a complete bid package is delivered to the address listed in this section 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 by the due date and time will not be considered.

Responses to this solicitation should be clearly marked "**Cost Study and Implementation of Revised Reimbursement Methodology for the Preschool/School Supportive Health Services Program (SSHSP) Request for Proposals**" and directed to:

Mr. Joseph Zeccolo  
NYS Department of Health  
Office of Health Insurance Programs  
Empire State Plaza  
Corning Tower room 2019  
Albany, NY 12237  
Phone: 518-486-6830  
E-mail: [jxz02@health.state.ny.us](mailto:jxz02@health.state.ny.us)

A Checklist for Proposal Submission has been included as Attachment 3 to this RFP. Bidders should use the checklist to ensure a complete proposal is submitted. Failing to submit a complete proposal may result in the proposal being disqualified from the selection process.

### 4. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

- a. Reject any or all proposals received in response to the RFP;
- b. Withdraw the RFP at any time, at the agency's sole discretion;
- c. Make an award under the RFP in whole or in part;
- d. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
- e. Seek clarifications and revisions of proposals;
- f. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
- g. Prior to the **bid opening**, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- h. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
- i. Change any of the scheduled dates;
- j. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- k. Waive any requirements that are not material;

- l. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
- m. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- n. Utilize any and all ideas submitted in the proposals received;
- o. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
- p. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

#### 5. Payment and Reporting

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

New York State Department of Health  
Office of Health Insurance Programs,  
Division of Financial Planning and Policy - OCP – 720  
Empire State Plaza  
Corning Tower  
Albany, New York 12237

Payment of such invoices by the Department shall be made in accordance with Article XI-A of the New York State Finance Law. Contractor will submit an annual invoice to the Department's designated payment office. The Invoice must follow the format provided by the Department. The amount allowed per invoice will be based on the final price detailed in the resultant contract. The annual invoice will be due thirty (30) days after the annual cost settlement and must be accompanied by a progress report. Invoices that are submitted without a progress report will not be processed for payment. Failure of the contractor to meet the deliverables outlined in this contract may also result in invoices not being processed until the deliverables are met.

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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

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

#### 6. Term of Contract

This agreement shall be effective upon approval of the NYS Commissioner of Health. The contract resulting from this RFP is expected to begin at the date shown on the cover page, and continue for a period of five years. This agreement may be canceled at any time by the Department giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

#### 7. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment 4).

#### 8. 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, the Office of the State Comptroller, and Department of Civil Service.

Both of these forms are included as attachments to this document.

#### 9. Lobbying Statute

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

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by

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

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

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

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

10. 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.

#### 11. 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/>

#### 12. 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.

### 13. 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.

### 14. 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 10% 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 DOH requires that bidders complete the M/WBE Utilization Plan (Attachment 5) and submit this Plan with their bid documents.

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

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

## **F. APPENDICES**

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

- ❑ APPENDIX A - Standard Clauses for All New York State Contracts
- ❑ APPENDIX B - Request for Proposal
- ❑ APPENDIX C - Proposal  
The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- ❑ APPENDIX D - General Specifications
- ❑ APPENDIX E

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

- ❑ Workers' Compensation, for which one of the following is incorporated into this contract

as **Appendix E-1**:

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

## **G. ATTACHMENTS**

1. Bid Form
2. Transmittal Form
3. Proposal Checklist
4. Vendor Responsibility Attestation
5. M/WBE Procurement Forms
6. Sales Tax Forms – CA-220 and TD-220
7. State Consultant Services Form A
8. State Consultant Services Form B
9. Sample Standard NYS Contract Language and Appendices

Attachment 1

**NEW YORK STATE  
DEPARTMENT OF HEALTH**

**BID FORM**

PROCUREMENT TITLE: **Cost Study and Implementation of Revised Reimbursement Methodology for the Preschool/School Supportive Health Services Program (SSHSP)**

FAU # \_\_\_\_\_

Bidder Name:

Bidder Address:

Bidder Fed ID No:

**A.** \_\_\_\_\_ bids a price of \_\_\_\_\_ percentage  
(Name of Offerer/Bidder)

of anticipated increased federal reimbursement as a result of implementing a Certified Public Expenditure methodology for the School Supportive Health Services Program above the initial \$100 million to be retained by the State annually.

\_\_\_\_\_ bids a price based on \_\_\_\_\_ per hour for  
(Name of Offerer/Bidder)

additional services as needed to comply with externally driven changes to DOH programs and requirements, including any state or federal laws, rules and regulations.

**While the prices (fee percentage and hourly rate) included in the Bid Form are 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:

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

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid or Request for Proposal* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid, Request for Proposal, or other solicitation document*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award

and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at:  
<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

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

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

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

Basis of Finding of Non-Responsibility:

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(Add additional pages as necessary)

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

No Yes

2b. If yes, please provide details below.

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

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

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(Add additional pages as necessary)

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

\_\_\_\_\_

(Officer Signature)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Officer Title)

\_\_\_\_\_

(Telephone)

\_\_\_\_\_

(e-mail Address)

Attachment 2 – Page 1 of 2

**Cost Study and Implementation of Revised Reimbursement Methodology for the  
Preschool/School Supportive Health Services Program (SSHSP)**

Transmittal Form

Enclose this letter with the Technical Proposal

I attest to the following bid requirements:

1. The bidding entity has a minimum of three (3) years of successful experience using the Certified Public Expenditure (CPE) reimbursement methodology and can demonstrate successful implementation of this model in School Supportive Health Services Programs in three (3) other states. Evidence of this experience is demonstrated in the enclosed proposal.

**Circle one: Yes No**

2. Does the bidding entity or its proposed subcontractors have a business relationship(s) and / or ownership interest that may represent a potential conflict of interest for the bidder as described by the Conflict of Interest specifications of Section C.4 of the RFP?

**Circle one: Yes No**

3. If yes, please attach to this transmittal letter a description of all such relationships with a brief narrative of how the potential conflict of interest and / or the disclosure of confidential information relating to this contract will be avoided.

*\*answering yes to the above question will not automatically disqualify the bidder. Each business relationship detailed will be reviewed to determine if a conflict of interest exists that would prohibit the Department from awarding the contract to the bidder.*

4. I intend to use a subcontractor for services provided in the contract resulting from this RFP.

**Circle one: Yes No**

5. If a subcontractor(s) will be used for services provided in the contract resulting from this RFP, the full name and address of any organization with which the bidder will subcontract is provided.

**Circle one: Yes No N/A**

6. I certify that \_\_\_\_\_ has a proven methodology for a Random Moment Time Study (RMTS) that is appropriate for SSHSP reporting that can be implemented by September 1, 2011.

**Circle one: Yes No**

Attachment 2 – Page 2 of 2

**Cost Study and Implementation of Revised Reimbursement Methodology for the  
Preschool/School Supportive Health Services Program (SSHSP)**

Transmittal Form

Enclose this letter with the Technical Proposal

Name of Bidder ( <i>Legal name as it would appear on a contract</i> )	
<b>Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:</b>	
Printed Name ( <i>First, Last</i> ):	Title:
Telephone number:	Fax number:
E-mail:	
Printed Name ( <i>First, Last</i> ):	Title:
<b>Signature of Bidder or Authorized Representative</b>	Date:

**By signing this form the above Bidder or Authorized Representative attests that the bid price submitted on the Bid Form (Attachment 1) will remain valid for a minimum of 365 days from the RFP Due Date**

## **Attachment 3**

### **Cost Study and Implementation of Revised Reimbursement Methodology for the Preschool/School Supportive Health Services Program (SSHSP)**

Checklist for Proposal Submission (For bidder's use only; should not be included in the proposal.)

- The Technical Proposal and the Financial Proposal are packaged in separate, sealed marked envelopes.
- Two signed originals plus six (6) additional copies of the Technical and Financial proposals are compiled in three-ring binders and are enclosed.
- Transmittal Form (Attachment 2) is completed, signed, dated and included with the Technical Proposal.
- The Bid Form (Attachment 1) is completed, signed, dated and included with the Financial Proposal.
- Completed Vendor Responsibly Attestation and, where required, a hard copy of the Vendor Responsibility Questionnaire, is included.

## Attachment 4

### 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 5

# New York State Department of Health

## M/WBE PROCUREMENT FORM

The following form is required to maintain maximum participation in M/WBE procurement and contracting:

Submitted with financial proposal:

1. Bidders Proposed M/WBE Utilization Plan

**New York State Department of Health**  
**BIDDERS PROPOSED M/WBE UTILIZATION PLAN**

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

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

**PROJECTED M/WBE USAGE**

	%	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		\$

## Attachment 6 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](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](http://www.tax.state.ny.us/forms/form_number_order_st_y.htm)

**Attachment 7 State Consultant Services Form A**

State Consultant Services  <b>FORM A</b>
--

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 12000	Agency Code
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 15<sup>th</sup> of each year to the following three addresses:

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

**Completing the Reports:**

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

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

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

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

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

**Attachment 8 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 12000	Agency Code
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 15<sup>th</sup> 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, 11<sup>th</sup> 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  
Attn: Consultant Reporting

#### Completing the Reports:

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

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

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

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

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

**Attachment 9    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 Proposals (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 \_:

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

\_\_\_\_\_  
CONTRACTOR . STATE AGENCY.

\_\_\_\_\_  
By: \_\_\_\_\_ . By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name . Printed Name

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

\_\_\_\_\_  
Date: \_\_\_\_\_ . Date: \_\_\_\_\_

\_\_\_\_\_  
State Agency Certification:

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

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

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

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

ATTORNEY GENERAL'S SIGNATURE . STATE COMPTROLLER'S SIGNATURE

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

\_\_\_\_\_  
Date: \_\_\_\_\_ . Date: \_\_\_\_\_

## 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 Commissioner of Health.
- 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  
New York State Department of Health  
Office of Health Insurance Programs  
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](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-486-1255. 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, 9<sup>th</sup> Floor  
Albany, NY 12236

### III. Term of Contract

- A. Upon approval of the NYS Commissioner of Health, 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 -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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

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

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

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

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

**22. 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: REQUEST FOR PROPOSALS**

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 Proposals (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 15<sup>th</sup> following the end of each state fiscal year included in this contract term. This report must be submitted to:
  - a. The NYS Department of Health, at the STATE's designated payment office address included in this AGREEMENT; and
  - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 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: \_\_\_\_\_