

NEW YORK STATE DEPARTMENT OF HEALTH
DIVISION OF NUTRITION
BUREAU OF SUPPLEMENTAL FOOD PROGRAMS

A Request for Proposal for

Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

RFP No. 1208161128

WIC Banking Services

Schedule of Key Events

RFP Release Date	June 19, 2013
Written Questions Due	July 10, 2013
Notice of Intent to Bid Due	July 5, 2013
Response to Written Questions	July 24, 2013
Proposal Due Date	August 14, 2013
Contract Term Begin Date	February 1, 2014
System Development and Testing	February 1, 2014
Check Processing Begin Date	April 1, 2014

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

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RFP Release Date: June 19, 2013

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For further information regarding these statutory provisions, see the Lobbying Statute summary in Section E.14 of this solicitation.

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A. INTRODUCTION

This Request for Proposals (RFP) is being issued by the New York State Department of Health (DOH), Division of Nutrition (DON) to identify a single vendor who will provide banking services for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The contract awarded in response to this RFP will be for a period of five years.

The WIC Program provides approximately 30 million checks for food annually to over 500,000 New York State residents. The checks are produced under a decentralized computer system operated at approximately 100 local WIC sites, referred to as Local Agencies. Checks are redeemed in approximately 4,400 retail food outlets, also known as vendors, throughout New York State. A small number of farmers (currently less than 400) are also authorized to accept WIC checks, limited to only Vegetables and Fruits checks.

The WIC Program requires banking services to process WIC checks for payment and to provide necessary data for effective management of the payment service system.

The discrete tasks required by this RFP include:

- maintaining a list of active checks;
- processing of presented checks;
- determining eligibility for payment or rejection of checks;
- processing exception checks submitted for reimbursement;
- reporting of processing information;
- providing data on processed checks;
- capturing and reporting the vendor number on all presented checks;
- comparing reported vendor number against a vendor file of authorized vendors;
- visual review (for missing/altered information) of 100% of all checks presented;
- developing a disaster recovery plan to ensure continuous service;
- other tasks as identified elsewhere in this RFP or inherent in the performance of the services solicited by this RFP.

At a minimum, bidders should respond to each requirement by affirming their ability to perform tasks as described in the RFP. The Department also encourages bidders to identify services which exceed the basic requirements of this Request for Proposal (RFP). If the bidder has an existing process or capability it deems is an improvement over the method or routine outlined in the RFP, it should provide a comprehensive description of the service functionality in its response for the related task. These can be improvements to the current process, new items or processes within the Scope of Work, or any service or innovation that could present cost savings, improved processing accuracy, or improved information dissemination. Examples include, but are not limited to, expanded or additional reports, premium imaging quality and retrieval services, automated notifications, and alternate reimbursement processing methodology. Specific areas of focus include, but are not

limited to, vendor number capture, Special Formula Food Instrument processing, and reimbursement check processing.

DOH reserves the right to choose the service enhancements over the minimum required banking services if they better meet DOH needs. Proposed enhancements, if desired, will be subject to further clarification of scope. No additional reimbursement beyond those listed in the Cost Proposal will be made to the vendor awarded a contract through this procurement for service enhancements.

1. Definitions

3TDES	Triple Data Encryption Standard using three keys
Above-50-percent vendors	WIC-authorized vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments
ACH	Automated Clearing House electronic banking network
BSI	Bureau of Special Investigations
CMIA	Cash Management Improvement Act
Contractor	Recipient of a contract as a result of the Request for Proposal submission
CPI-U	Consumer Price Index – Urban Consumers
DOH	The Department of Health
ECR	Earnings Credit Rate
Enhancement	Any improved or alternative method of providing Scope of Work requirements. Enhancements will be reviewed and scored under the Technical Proposal, but no additional compensation will be made to the bidder.
FedWire	Federal Reserve direct wire system
Implementation Fee	Fee paid to the bidder for the cost to initially develop and implement a DOH approved system to provide the services detailed in the RFP. An implementation fee, if any, should be included in the Cost Proposal.
LA	Local Agency
NACHA	National Automated Clearinghouse Association
NGA	“Not Good After” date. Date after which WIC check is invalid.
NGB	“Not Good Before” date. Date which WIC check becomes valid.

NTE	“Not-To-Exceed” value. Total Price limit for items on a WIC check
OSC	Office of the State Comptroller
PNP File	Paid/Not Paid File containing all items paid since the last file was produced and those items issued recently that remain outstanding.
RFP	Request for Proposal
RR	Federal Reserve Bank Reserve Requirement percentage (currently 10%)
SFFI	Special Formula Food Instrument
SNAP	Supplemental Nutrition Assistance Program
UCC	Uniform Commercial Code
USDA	United States Department of Agriculture
Vendor	Typically a grocer or pharmacy approved by DOH to sell WIC items and accept WIC checks as payment for those items. Can also be a farmer, approved by the Department of Agriculture and Markets, that may only redeem WIC Vegetables and Fruits checks.
Vendor ID	5-digit number assigned to each vendor for identification
Vendor Stamp	An assigned number (up to five (5) digits) used by the vendor for endorsement purposes.
VMA	Vendor Management Agency
VPN	Virtual Private Network
WIC	Special Supplemental Nutrition Program for Women, Infants and Children
WIC Farmer	See Vendor definition
WICSIS	WIC Statewide Information System

B. BACKGROUND

1. Description of the WIC Program

The WIC Program serves low-income pregnant, postpartum, and breastfeeding women, infants, and young children who are at nutritional risk due to medical conditions or inadequate dietary intake. WIC is an adjunct to health care, providing nutrition education and prescribed food packages to the targeted population. Current participation in WIC in New York State is approximately 500,000 persons per month. The WIC Program services participants at

approximately 100 Local Agencies statewide. Distribution of checks for purchasing food occurs at these WIC Local Agencies.

Every Local Agency operating a WIC Program has entered into a contractual agreement with the New York State Department of Health. These agencies include hospitals, health clinics, city and county health departments, and community action programs.

Each participant family receives an identification (ID) card listing the Local Agency name and address and the name and WIC ID number of each participant in the family. The WIC ID card may also designate other individuals (proxies) authorized to pick up and redeem checks. Participants sign an electronic check register when receiving checks and the signed ID cards are shown when checks are redeemed in stores. Any WIC-approved food vendor may accept WIC checks. WIC farmers may only accept “Vegetables and Fruits” checks.

The WIC Program is a federal program under the jurisdiction of the United States Department of Agriculture (USDA) and administered by the New York State Department of Health (DOH). The program is governed by rules set forth in the Code of Federal Regulations, 7 CFR 246, titled the Special Supplemental Nutrition Program for Women, Infants, and Children.

The WIC Program receives funding from four major sources – The USDA Federal grant award, the New York State Supplemental Nutrition Assistance Program (SNAP) appropriation, the Infant Formula Rebate program, and the Infant Cereal Rebate program.

2. Description of WIC Food Vendor Component

WIC vendors are food stores, pharmacies or WIC farmers that have entered into formal agreements with the WIC Program or the NYS Department of Agriculture and Markets (Ag & Markets) to provide WIC foods to WIC participants in accordance with the USDA regulations.

a. Vendor Enrollment

Vendor Management Agencies, or VMAs, are Local Agencies that manage the State’s participating WIC vendors. VMAs are responsible for assessing vendor applications for WIC Program participation and entering into contracts with vendors who meet the vendor enrollment criteria. Any vendor that applies for participation in the WIC Program is enrolled if enrollment criteria are met. Ag & Markets manages the enrollment of WIC farmers.

b. Vendor Banking Information

Each vendor fills out a Bank Designation Form at the initial enrollment and anytime changes are made to their banking information. The Bank

Designation Form includes the following: the vendor's business name and address, the personnel authorized to deposit checks, the bank's name and address where the WIC checks will be deposited, the bank account and routing transit number where the checks will be deposited, account information for where electronic reimbursements may be made (if different than the bank of deposit), and the vendor's signature. The Bank Designation Form is returned to the contracting VMA and forwarded to DOH for processing along with a voided blank check or deposit slip indicating the bank and account and routing transit number. Ag & Markets manages the banking information for WIC farmers.

c. Vendor Training

VMAs are responsible for providing training to each of their contracted vendors on a regular basis. Vendor training serves numerous functions in support of the WIC Program. The ultimate goal of vendor training is to assure the most effective and efficient delivery of prescribed foods to WIC participants. VMAs are required to maintain WIC vendor training information. This information includes, but is not limited to, dates of training sessions, names of training instructors, vendors invited, vendors in attendance, a brief summary of suggestions and comments, and other vendor contacts to resolve problems. Ag & Markets manages the training for WIC farmers.

d. Vendor Monitoring

Vendor monitoring is defined as the review of contracted WIC Program vendors on a regular basis to determine adherence to Program regulations and address problems among vendors, participants, and local WIC staff as they arise. Unannounced on-site visits by VMA program representatives are required to maintain contact with contracted vendors. Informal contacts are initiated when specific complaints are received relative to a vendor, when a vendor brings problems to the attention of the VMA, or when potential problems are detected through the review of computer reports. Such contacts are documented in the vendor file. Ag & Markets manages the monitoring of WIC farmers.

3. Banking System Overview

The current check processing system requires the Contractor to process for payment WIC food checks deposited by approximately 4,400 WIC food vendors throughout New York State who are authorized to redeem WIC checks. Currently approximately 2.5 million checks are presented for payment monthly. These checks, which are issued to approximately 500,000 WIC participants each month, are presented to the vendors in exchange for specifically-prescribed food items. DOH estimates that an average of 2.5 million checks will be presented each month over the term of the contract. WIC processing is expected to remain

paper based during this contract period, with plans to move to Electronic Benefit Transfer (EBT)-issued benefits by 2020. This contract may be subject to early termination in the event that NYS implements EBT-issued benefits prior to the end date of the contract resulting from this RFP.

a. Decentralized Check Production and Distribution

WIC Local Agencies throughout New York State collect and data enter applicant certification information. Eligible participants receive computer-generated checks printed on site at the Local Agency using the WIC Statewide Information System (WICSIS). Equipment used to generate checks includes file servers, personal computers, signature capture devices, check printers, secure font modules and laptop servers. Local Agencies place a monthly order for check stock and toner and are responsible for maintaining an inventory sufficient to serve their WIC caseload, but are not required to provide a written inventory report to the State. In the event WICSIS is temporarily unable to print checks, participants receive pre-printed manual checks, onto which specific information is handwritten.

On a nightly basis (except weekends and major holidays), commencing at approximately 12:00 a.m., the certification and check issuance information is uploaded to the contracting bank's mainframe for processing via encrypted (3TDES) VPN tunnel. Later each night, the processed information is downloaded to the State's WIC on-line system and made available to all WIC sites throughout the State. Thus, each Local Agency site will have updated information for all participants served by that agency through the previous day.

Attachment 4 (page 64) contains a sample WIC check. Printed on each check is a statement specifying the foods that may be purchased (for example, "1 Gallon Non-Fat or 1% Low-Fat Milk", "3 12.5-Ounces Powered Enfamil PREMIUM Infant", etc.). Also printed on the check is a variable "Not-To-Exceed" (NTE) amount that places an upper limit on the value for which the check can be redeemed. In most cases, participants are issued multiple checks to make up the prescribed food package. The participant is given one, two or three months' worth of checks at each Local Agency visit.

Each set of checks is marked with a "Not Good Before" date and a "Not Good After" date. WIC checks are only good for 30 days and must be used only within the "Not Good Before" and "Not Good After" dates. The WIC vendor, through its contract with a WIC Vendor Management Agency (or in the case of WIC farmers, through a formal agreement with Ag & Markets), agrees to abide by Program rules and regulations. These include charging the actual shelf price for items purchased and depositing the checks within specified time periods.

The WIC vendor is allowed up to 60 days from the “Not Good Before” date to deposit the check in a sole authorized bank account previously designated by the WIC vendor in its WIC Vendor Contract (or Farmer Agreement). Deposited checks are presented to the Banking Contractor for review and payment or rejection. The Banking Contractor has up to 65 days from the “Not Good Before” date to process deposited checks. Reimbursement for certain checks mailed in by WIC vendors may also be made within 75 days of the “Not Good Before” date.

b. Check Processing Files

Each night a Check Issuance File and a Vendor File are transmitted, separately, to the Banking Contractor via encrypted (3TDES) VPN tunnel. The Check Issuance File, containing check issuance data collected nightly from the Local Agencies, provides the Banking Contractor with information on all checks issued or voided and reported to WICSIS since the previous upload. The Vendor File is an update file, not a cumulative file, and provides information on vendors authorized to accept and deposit WIC checks. The issuance records are processed the following night by the Banking Contractor prior to processing the checks presented that day. Only checks reported to the Banking Contractor as active can be paid. Similarly, only authorized vendors can be paid. A farmer vendor file is transmitted to the Banking Contractor on an “as needed” basis after Ag & Markets submits an updated file to DOH. This file has the same format as the Vendor File generated from WICSIS.

Upon payment of the checks, the Banking Contractor provides DOH with an electronic file (the PNP File) containing information on redeemed checks. The file includes the check number, the date presented, the amount presented, the amount paid (or the reason for rejection), and the ID number of the vendor that redeemed the check. Refer to **Attachments 5A thru 5D (pages 66 - 72)** for file layout information and **Attachment 8 (page 80)** for information on the DOH Computing Environment. **Attachment 10 (page 86)** shows a diagram of the flow of check information.

C. DETAILED SPECIFICATIONS

1. General Bidder Requirements

The proposing Bank must have on file or be willing to file with the State, **Attachment 23 (page 146)**, “State of New York Undertaking for Bank Deposits and Assignment of Securities” before an account is established.

a. Bidder Entity

The bidder must be a commercial bank licensed in New York and be designated by the Office of the State Comptroller as a depository bank. **Bids**

from financial institutions that do not meet this criterion will be automatically rejected, and will not be scored.

b. Memberships

Bids from financial institutions that do not meet the following criteria will be automatically rejected, and will not be scored.

i) Automated Clearinghouse

The bidder must be a member of an Automated Clearinghouse Association and be in compliance with all rules and regulations set forth by the National Automated Clearinghouse Association (NACHA), local ACH association(s) and ACH operators. The Contractor must be able to act as both an Originating Depository Financial Institution (ODFI) and a Receiving Depository Financial Institution (RDFI) - able to initiate and receive ACH entries.

ii) FedWire

The bidder must be a member of the Federal Reserve direct wire system.

c. Bidder Collateral

The bidder must commit to pledge collateral to secure the State's interests in any depository account to the extent deemed appropriate by the Comptroller of the State of New York in accordance with Sections 105 and 106 of the State Finance Law. The Office of the State Comptroller shall establish and periodically review and adjust, as necessary, the amount held as collateral. DOH reserves the right to periodically verify the amount of collateral held.

Bids from financial institutions that do not commit to pledge collateral to secure the State's interests in any depository account to the extent deemed appropriate by the Comptroller of the State of New York in accordance with Sections 105 and 106 of the State Finance Law will be automatically rejected, and will not be scored.

d. Corporate Ability to Perform

The bidder must certify and demonstrate the existence of corporate and computing resources adequate to perform the tasks solicited by this RFP.

e. Conflict of Interest

The bidder must certify and demonstrate that it has no existing relationships nor does it anticipate involvement in any relationship which, if its proposal is accepted, would create the possibility for improper use of information or resources obtained through this contract or any other contract with the State of New York.

Failure to identify and/or disclose any such existing or potential conflict of interest in the Contractor's proposal shall be sufficient cause for disqualification of a proposal or cancellation of a contract.

2. Scope of Work: Banking System Requirements

This section delineates the minimum requirements for the daily operation of the WIC banking services system.

a. Account Requirements

i) Account Structure and Maintenance

The WIC Banking Account structure will provide for one WIC Food Account to be managed as a cash account. Funds are deposited electronically by the Office of the State Comptroller to cover WIC checks processed in accordance with the contract. This will be a controlled disbursement account. Funds are to be used only for payment of WIC checks and other food instruments processed in accordance with the terms of the contract and shall not be commingled with any other monies.

ii) Deposits to the WIC Food Account

Funds will be deposited to the WIC Food Account by the New York State Office of the State Comptroller on a daily basis (or alternate schedule, if DOH desires).

iii) Interest Earnings on Account Balances

Funds in the WIC Food Account will generate interest earnings as required by the Cash Management Improvement Act (CMIA).

The contractor will compute interest in accordance with the formula referenced in **Attachment 3: Earnings Credit (page 62)**. The resulting interest will be applied as a credit to the monthly service invoices submitted to DOH by the Contractor. The Contractor must confirm the Earnings Credit Rate with OSC on a monthly basis.

iv) Statement of Transactions and Account Balances

Daily, by 10:00 a.m., the Contractor will inform the Office of the State Comptroller electronically of the amount needed to fund the WIC Food Account to a zero balance level for that day. In determining the amount of funding needed, the bank will need to take into account the ledger balance.

Daily, the Contractor will provide the opening available balance in a BAI2 format electronically to OSC. Any adjustments after the final presentments of funds required is reported must be held until the next business day.

v) Fund Security

The Contractor will maintain the designated account for the WIC Program subject to such security, access and collateral provisions as required by the Office of the State Comptroller and DOH.

b. Issuance File Processing

i) Check Issuance File

The Contractor will accept and process Check Issuance Files transmitted electronically from DOH. This information is used by the Contractor to determine whether a check being deposited shall be paid.

A Check Issuance File is created and sent daily to the Contractor. The file contains information on the checks that have been printed for issuance to participants, including the check number, the WIC Program's bank account number, the maximum amount for which each check can be cashed, and the "Not Good Before" date (check issuance date). The Contractor uses the check issuance date to determine if the check is active and eligible to be paid. **Attachment 5A, (page 66)**, contains the file layout. The Contractor will accept such file via encrypted (3TDES) VPN tunnel.

ii) Skeletal Issuance Records

There may be instances when the computer system is unable to print checks on demand. If this occurs, Local Agencies may issue manual (partially-handwritten) checks to participants. Agencies maintain a stock of pre-printed manual checks. Manual checks are pre-printed with certain "skeletal" issuance information, including the check number, food package information and the maximum value for which they may be redeemed.

For each supply of manual checks printed, DOH will transmit a Check Issuance File, Section C.2.b.i. above, containing skeletal issuance records for the manual checks. These records will contain sufficient information necessary for the Contractor to process the check (the check number and the maximum value, and an indicator identifying the check as a manual check).

When the manual checks are issued to a participant, possibly months after skeletal issuance records were transmitted, the Local Agency handwrites additional information on the check, including the "Not Good Before" date. When computer system functionality returns, the Local Agency staff data enter the additional (handwritten) information in WICSIS. An updated issuance record containing the relevant additional information will be included in a Check Issuance File for checks not already reported as paid.

Since checks being presented may be recorded and paid against the skeletal record, there may be instances where checks are paid by the Contractor before the additional information becomes available. DOH will not transmit an updated issuance record for items already reported as paid.

c. Vendor File Maintenance and Update

i) Conventional Vendor (retail food store, pharmacy)

DOH will maintain a file of vendors that have been authorized to accept and deposit WIC checks. The WICSIS Vendor Subsystem allows DOH employees to access the WIC Vendor File to inquire, create maintenance transactions and update the Vendor File. Transactions entered on-line are applied to the Vendor File during the nightly batch update process.

The Contractor will accept and process Vendor File transmissions from DOH via encrypted (3TDES) VPN tunnel (See **Attachments 5B and 5C, pages 68 and 70**, for the file layout.). The Contractor will maintain its own master Vendor File. Updates to the Vendor File will be transmitted on a nightly basis to the Contractor. As new WIC vendors are authorized they are assigned a 5-digit vendor number and are issued a Vendor Number Stamp for entering their vendor number on the checks being deposited. The Contractor will not pay any checks without an authorized vendor number stamped on the check. This stamp design is unique and may only be obtained from New York State. In the future DOH may approve alternative methods of placing vendor numbers on WIC checks.

ii) WIC Farmer

Ag & Markets will maintain a file of WIC Farmer vendors that have been authorized to accept and deposit WIC Vegetables and Fruits checks and will periodically provide updates to DOH. The Contractor will accept and process Farmer Vendor File transmissions from DOH via encrypted (3TDES) VPN tunnel (See **Attachment 5C, page 70**, for the file layout.). The Contractor will append the Farmer vendor file to its master vendor file. WIC farmer vendors are currently assigned a 4-digit vendor stamp in the range '0001' - '5000'. The Contractor will identify and isolate for review WIC farmer transactions that exceed the NTE of WIC Vegetables and Fruits checks.

d. Daily Check Processing

i) Processing Capability

The Contractor will have the capability to handle the processing of WIC checks for payment as they are received on a daily basis. The estimated volume of WIC checks for the proposed contract term is 2.5 million checks per month worth approximately \$40 million.

ii) Item Review

The processing of checks includes both an automated review (using information provided in the Check Issuance File and the Vendor File) and a manual visual review of 100% of all items. All items will be handled within the guidelines of the Uniform Commercial Code or the 24 hour limit for “payment on demand” items.

iii) Visual Review of Items

The Contractor will visually review 100% of all items presented for payment, both paper and images, for missing or altered signatures and amounts, and missing or illegible vendor numbers. The visual review can be of physical items or images of the items.

iv) Data Capture of Vendor Number

The Contractor will capture the vendor number for verification with its master Vendor File that the vendor is authorized to accept WIC checks.

v) Check Digit

The Contractor will employ a check digit routine to accurately identify the check number and to prevent unmatched item data from being passed to DOH. The applicable check digit routine currently is MOD 9 DR.

vi) Hold items for special handling

Before paying or not paying an item, the contractor will automatically check against list(s) provided by DOH and hold the items until DOH gives guidance on item disposition. This situation can occur periodically. DOH requires this feature so vendors do not incur bank fees erroneously. Describe the methodology to be used to perform this function in the Technical Proposal.

e. Check Rejection Criteria

The Contractor will reject vendor checks based on the Check Rejection Criteria listed in **Attachment 7A (page 76)**. If the Contractor rejects a check that the vendor has deposited, the Contractor returns that check to the vendor via the vendor’s depository bank. Check 21 Law allows for a vendor’s bank to return a WIC check in the form of a substitute check, or “image replacement document.” When this occurs, prior to returning the item, the Contractor may either attach a paper strip with number codes (MICR line) to the bottom of the document or place the entire document inside a protective paper sleeve.

The current volume of rejected checks is approximately 14,000 monthly. Check screening and rejection must occur within the 24 hour limit for

“payment on demand” items. (Note: As described in Section C.2.h, page 18, vendors may mail in reimbursement requests for certain rejected checks.)

If an item meeting any rejection criteria is erroneously paid by the Contractor, it is the responsibility of the Contractor to take corrective action.

f. Second Presentment of Select Checks

There are instances when a check that was rejected on the first presentment may be re-deposited and paid. For a WIC check where the sole rejection reason is a missing or illegible vendor number stamp, the Contractor will return the item to the vendor for correction and allow for its re-deposit.

The re-deposit capability will allow for the checks to be presented a second time only. If, after the second presentment, the check has a missing or illegible vendor number stamp or can be rejected for any of the Check Rejection Criteria, the Contractor will stamp the check “Do Not Redeposit” and permanently return it to the vendor.

g. Formula Indicator Flag

The Vendor File contains an indicator that denotes if the authorized store is a grocery or a pharmacy. The Check Issuance File contains a “Formula Indicator Flag” that denotes whether the WIC check includes infant formula. Checks for infant formula do not contain any other food items. Pharmacies that participate in the WIC Program are only allowed to redeem checks for infant formula. If a pharmacy redeems a WIC check for other food items (Formula Flag = 0), the Contractor will reject the check as an “Unauthorized Food Package” and return it unpaid. These checks cannot be reimbursed at a later date.

h. Reimbursement Check Processing

Vendors are permitted to seek reimbursement for certain checks that have been or will be rejected. These include checks that were deposited and rejected for exceeding the maximum value or for having an altered amount, and checks never deposited in anticipation of being rejected for those reasons. Reimbursement is also allowed if an error has occurred at no fault of the vendor. Checks submitted for reimbursement are not returned to the vendor. Vendors are required to submit reimbursement requests within 75 days of the “Not Good Before” date.

i) Flagging and Paying Reimbursement Items

Vendors submit reimbursement requests through the mail directly to the Contractor via a pre-established P.O. Box. The Contractor will process checks submitted by vendors for reimbursement. In the Paid/Not Paid file, the Contractor will flag these checks as reimbursement items and include the check rejection code for checks that are rejected (refer to

Attachment 7A, page 76, for codes). In a subsequent Check Issuance File the Contractor will receive State calculated reimbursement amounts (based on the average redemption amount for that check type) for the flagged items. The State inserts a code in the flag field to indicate that a reimbursement amount has been provided. The Contractor will provide payment via an electronic transfer of funds through the Automated Clearing House (ACH) system to the vendor's designated WIC bank account. The Contractor will perform the ACH function at least twice a week. If vendors seek reimbursement for checks ineligible for payment (e.g., checks with missing signatures), the reimbursement amount will be \$0 (zero dollars).

The Contractor may propose an alternate method of processing reimbursement items that would eliminate or reduce the need for vendors to submit reimbursement requests.

Any proposed enhancements to the current method must be in compliance with Federal processing timeframes (payment/rejection within 24 hours) and must allow for final payment to the vendor at the reimbursement amount. The Contractor will be required to have a processing system in place by the contract start date, irrespective of whether it is an enhanced method.

ii) Mailing Statements to Vendors for Reimbursement Items

The Contractor will send statements to the vendors (either to the individual store or to a corporate owner) advising of the reimbursement action taken. Statements are to be sent to the individual store if the vendor uses the same account for deposits and electronic reimbursements. If the vendor uses two different accounts, the statement will be sent to the Vendor Owner address. Use of separate accounts indicates the vendor deposits WIC checks into one account, but electronic reimbursements are made to a vendor's corporate account. The mailing address for statements will be included in the Vendor File transmitted to the Contractor.

The statements will include, at a minimum, the vendor name, vendor address, WIC vendor number, vendor bank account number, statement date, check number, date flagged for reimbursement, reject reason, presented (requested) amount, reimbursement amount, and total amount of the electronic funds transfer. A statement can include all checks from a multiple reimbursement submission.

i. Special Formula Food Instruments (SFFI)

In addition to checks, the WIC Program also issues Special Formula Food Instruments (SFFIs), **Attachment 18 (page 103)**. The SFFIs are vouchers for

special infant formulas, some of which cannot be issued on a WIC check. Use of these vouchers is limited. Approximately 100 SFFIs are issued each month.

Vendors will mail redeemed SFFI vouchers directly to the Contractor via a pre-established P.O. Box. DOH will provide the SFFI number, the vendor number, and the payment amount to the Contractor. The Contractor must provide a method of using existing banking functionality, such as ACH, to create a credit to a WIC vendor for payment of these vouchers. The Contractor will send a statement to the vendors advising them of the action taken that will include the SFFI number, the vendor number, the payment amount and the payment date.

The Contractor will implement system edits to preclude SFFI processing if they are postdated, paid amount < \$0, paid interval > 90 days, or if the issued date on SFFI's received January 1 and later is from the prior Federal fiscal year.

The Contractor will scan all SFFIs received and make the images available via the on-demand system identified in Section C.2.q., Imaging/Copies of Food Instruments (page 25). Alternatively, but less desirable, SFFI images will be provided to DOH at least monthly either electronically or via digital media.

The Contractor will provide a file of SFFI transactions weekly in a file format to be provided by DOH. At a minimum, required fields will include Batch #, Participant ID, Vendor ID, SFFI #, Formula Code, # Units, Issue Date, Paid Date, Unit Cost, Total Payment, Payment Code, and Instrument Status. The system must also prevent duplicate entries within files and across files (cannot be same SFFI# and Instrument Status).

j. On-Line System

The Contractor will provide an on-line system that permits the Contractor and DOH to view the status of all checks outstanding and presented (paid and rejected), and that permits OSC to view account balances and funding requirements. The minimum required fields for the on-line inquiry system are listed in **Attachment 11 (page 88)**. At a minimum, full access to the system will be available daily from 7:00 a.m. – 6:00 p.m. This system will retain a master file of all items for a set period of time determined by DOH, as follows:

i) Paid Item Retention

Paid items will be maintained for a period of 45 days after the payment date. After 45 days, the paid items may be purged from the on-line master file and archived.

ii) Outstanding/Rejected Item Retention

Outstanding items (checks never presented or submitted for reimbursement) and rejected items will be maintained for a period of 120 days from the issue date (the “Not Good Before” date). After 120 days from the issue date, these items may be purged. Checks never presented will be coded in the Paid/Not Paid file as an Aged Food Instrument. Rejected checks purged from the on-line file will retain their last presentment code.

iii) Master File Retention

The above timeframes apply to the on-line master file inquiry system for DOH. As described in Section C.2.o (page 23), the Contractor will provide account statements along with monthly vouchers. As such, the Contractor will retain master file data for a long enough period of time to allow for completion of account statements.

k. Select Review

i) Select Review of Bank Account Information

For specific vendors identified by DOH, the Contractor will select and review a sample of checks containing a valid vendor number to determine whether the bank and account number to which the WIC check was deposited is the sole authorized account for the deposit of the check. One to twenty vendors may be selected each month. During that month, the Contractor will out-sort all reimbursement checks for the selected vendors for return to DOH for review. Also, in addition to all other routine edits, the Contractor will review the back of each check presented to verify that the account of deposit is valid. In cases where the bank and account number do not match the vendor’s reported information, the Contractor will return the check to the vendor stamped “Invalid WIC Account – Do Not Redeposit”. The vendor’s checks are reviewed until an invalid account is found for that vendor, or the month ends, whichever is sooner. In addition, the Contractor will provide DOH with a monthly report identifying the WIC vendors reviewed under this out-sort function by vendor number, the number and value of checks reviewed for each vendor, the findings, and in cases where the checks are returned to the depositor, the number and value of checks returned.

ii) Draft Pull Audit Process

On an occasional basis vendors may be selected for a draft pull audit in which their checks will be out-sorted for return to DOH Bureau of Special Investigations (BSI). The Contractor will out-sort checks from particular vendors identified by DOH. The Contractor will also out-sort a particular range of check numbers identified by DOH. Up to ten vendors per month may be selected for this process. The Contractor will be notified in

advance of a draft pull audit so that preparations can be made to perform the required out-sorting.

iii) Quality Control

The Contractor will conduct monthly quality control assessments of all staff responsible for visually reviewing WIC checks. Assessments will comprise re-examining at least 1/2 of 1 percent of the previously reviewed checks to detect errors. Appropriate corrective action should occur if problems are found.

I. Voids and Stop Payments

i) Voids

The Contractor will NOT reject checks with a status of “void”, but if paid, will report these checks daily in an electronic report. Checks may be voided if they are deemed unusable. If a printed check is deemed unusable, the Local Agency will update the status of the check in WICSIS (to void, void-returned, or void-reissued) and will destroy the physical check. Unusable checks include checks damaged during the printing process, checks accidentally damaged by participants prior to redemption, and checks listing incorrect foods or amounts. The status of “void” is transmitted to the Contractor via the Check Issuance File.

ii) Stop Payments

All stop payments remain in effect permanently. No additional guidance from DOH is required in order to perpetuate stop payment status.

There are two kinds of stop payments, “Soft” and “Hard.” “Soft” stop payments are specified by the Local Agencies via WICSIS and often end up being checks reported lost by the WIC participant and ultimately redeemed. The Contractor will NOT reject checks with a status of “soft” stop payment but will identify paid “soft” stop payments daily via electronic reporting. The status of a “soft” stop payment is transmitted to the Contractor by means of a stop payment flag field in the Check Issuance File. In addition, a “soft” stop payment is recorded in WICSIS as a status identifier on food instruments.

“Hard” stop payments are NOT to be paid by the contractor. These items usually involve fraud or counterfeit items and will be identified by DOH in real time to the contractor. Additionally, the Contractor shall provide for the acceptance of “hard” stop payment notifications received via phone, fax or electronically. These “hard” stop payments are to be rejected and returned to the vendor. The contractor will confirm all types of stop payment orders by 10:00 a.m. the following day via mutually agreed to media (e.g., telephone calls, e-mail, etc.). The “hard” stop payment status is not ever rescinded.

m. Investigative Check Retrieval

Investigative checks (also called “compliance buy” checks) are used to monitor and conduct investigations of vendors. For investigative purposes, the Agency number printed on the check will be that of a currently operating Local Agency. Investigative checks will be identified by a field in the Check Issuance File so that they can have limited edits applied to them and can be out-sorted for return to DOH BSI for review.

The Contractor will allow these checks to bypass all of the normal edits and be paid.

The Contractor will return all investigative checks to DOH BSI on the next working day with a statement summarizing the daily activity including check numbers, amounts paid, and other pertinent information. Upon receipt, these checks will become part of the case file and will be retained by DOH.

n. Paid/Not Paid Files

The Contractor will transmit a Paid/Not Paid File to DOH on a daily basis. The file will be transmitted no later than the next business day after the date of processing. The Paid/Not Paid File will report on all items presented for processing on that day as well as expired, or “aged off”, items. This file will contain the check number, the vendor number, the date presented, the presented amount, the amount paid (if not rejected), the presentment or rejection code, and an indicator for checks flagged and/or paid through the reimbursement process. The file layout for the Paid/Not Paid File is in **Attachment 5D (page 72)**. Refer to the file layout for the full description of required data elements. The presentment codes are listed in **Attachment 6 (page 74)**. The check rejection codes are listed in **Attachment 7A (page 76)**. The Contractor must establish system edits to ensure only valid codes are passed to DOH.

Note: the Check Rejection Codes are a subset of the Presentment Codes.

The Contractor will maintain backups of each file sent to DOH for a minimum of four months. Should DOH require a backup copy, the Contractor will send it to DOH within two working days. This backup file must be identical to the primary file.

o. Account Statements and Activity Reports

The Contractor will provide account and activity statements along with the monthly voucher. The account statements will detail checks presented, paid, returned, and any adjustments (debits, credits, reversals). DOH will use WICSIS-generated reports to reconcile the account statements provided by the Contractor. All statements and reports should also be available

electronically in a mutually agreed upon format (delimited format where practicable).

i) Account Statements

The following information identifies the minimum requirements for account statements and reports concerning transactions posted to the WIC Food Account. The Contractor will submit this information along with vouchers for payment. Samples of statements and reports should be included in the Contractor's proposal.

The Account statements will include:

- Account number
- Itemization of debits and credits (a list total for debits by day showing amounts paid by presentments and those paid by reimbursements is acceptable due to the volume of items processed)
- Total number of items processed
- Beginning balance on the account
- Total amount paid for the period
- Total deposits/credits for the period
- Ending balance on the account

The above information is required on a daily basis along with cumulative monthly and yearly summary reports.

ii) Activity Reports

The monthly activity reports will detail the daily activity of items, including, at a minimum:

- Number and dollar value of items Paid
- Number of items Not Paid (by reject reason)
- Number and dollar value of reimbursement items

In addition to the cumulative monthly and yearly summary reports, associated daily activity reports will be made available through an on line system each business day. Other activity reports, including, but not limited to, daily vendor file updates and vendor ACH activity, may also be required. These reports will be discussed during the contract development phase.

p. Check Storage

The Contractor will store each month's paid checks, either original WIC food instruments or substitute checks, in a secure location for two months subsequent to the month received as paid or undistributed. At the end of the minimum storage time, the Contractor is responsible for disposing of the checks by coordinating this action with a paper disposal firm. Access to stored checks will be made available during normal business hours by the

Contractor for authorized employees or sub-contractors of DOH upon written notification of authorization by DOH personnel. Checks will be stored so as to be physically easy to retrieve.

q. Imaging/Copies of Food Instruments

The Contractor will maintain images for DOH access of all food instruments received, including items received in the form of images from other sources (e.g. Federal Reserve, depository banks). For original or physical items received, the Contractor will have a method of capturing and storing a high quality image of the front and back of all presented food instruments (paid, rejected, reimbursement and SFFI). A highly secure, user friendly, browser based, on-demand image retrieval system is desirable. Strong preference is given to a system providing secure access allowing easy download and/or printing of stored images and which gives DOH users the ability to obtain multiple, non-consecutively numbered, images via a single request.

Additionally, the Contractor will be required to provide clear and legible image copies to DOH, upon request. The request will identify the check serial number(s) and approximate time period during which the check was presented for payment.

Describe the technology used to produce high quality images and if it offers any distinguishing features (e.g. color, low 'problem image' rates, exceeds generally accepted minimum quality standards, etc.).

r. Data Recovery

In the event that electronically transmitted data cannot be used as input to the WIC system for any reason, the Contractor will re-send the data within one business day, at no charge to DOH.

s. Courier Services

i) Postal Delivery and Pick-Up.

The Contractor will establish courier services for the pick-up of mail from P.O. Box 22074, Albany, NY, 12201-2074, established for the receipt of vendor reimbursement requests and SFFI's. The Contractor will be required to establish and maintain a relationship with the U.S. Post Office in order to facilitate mail receipt. The Contractor will sweep the P.O. Box at least once per business day. The annual fee for the DOH-owned reimbursement P.O. Box will be paid by the contractor.

ii) DOH Delivery and Pick-Up

The Contractor will provide courier service for pick-up and delivery from/to DOH Central Offices.

A courier schedule will be developed during contract development phase. The schedule will consider the requirement that documents received in the P.O. Box or Central Offices will be available for same day processing.

t. Processing Center Requirements

The Contractor's deposit and processing location will allow for same day processing of mailed items and facilitate timely processing of food instruments.

The Contractor will have documented procedures and physical security controls which limit access to the Processing Center to only those employees with job functions that require access (e.g. computer operations, check and document handling, quality control, etc.).

u. Above-50-Percent Vendors

Implementation of USDA regulations regarding "above-50-percent" vendors will require the Contractor to perform ACH debits from some vendor accounts. ACH debit files will be provided to the contractor, currently on a monthly basis, for processing via the ACH network.

3. Contractual Requirements

a. Duration of Bid Offer

The services and price offered in the proposal submission of all bidders shall remain in effect for 180 days from the date of submission.

b. Confidentiality

To the extent permitted by law, bidder's proposals will not be disclosed, except for purposes of evaluation, prior to approval by the Office of the State Comptroller of the resulting contract. All material submitted becomes the property of the State and may be returned at the State's sole discretion. Submitted proposals may be reviewed and evaluated by any person designated by the State, other than one associated with a competing bidder. Selection or rejection of a proposal does not affect this right.

If a bidder believes that any information in its proposal constitutes a trade secret and wishes such information not to be disclosed pursuant to the New York State Freedom of Information Law (i.e., Article 6 of the Public Officers Law), the bidder should submit with its proposal a letter specifically identifying by page number, line or other appropriate designation, any information requested to be treated as a trade secret and explain in detail why such information should be so treated. Failure of a bidder to submit such a letter identifying trade secrets with its proposal shall constitute a waiver by the bidder of any rights it may have under Section 89

(Subdivision 5) of the Public Officers Law relating to the protection of trade secrets.

The successful bidder will be required to hold all information obtained through this contract as confidential information.

c. Contract Development

Upon tentative selection of a Contractor, DOH will enter into a contract development phase intended to produce a formal contract embracing the terms and conditions set forth in this RFP and the performance offered by the bid response. In the event that a successful contract is not developed, DOH may select a different bidder to perform the RFP services. Upon completion of contract development, both the bidder and DOH will sign the contract document. DOH will then submit the contract to the Attorney General's Office and the Office of State Comptroller for review and approval. The contract will go into effect upon the approval of the State Comptroller. New York State Division of the Budget approval may also be required prior to submission to the State Comptroller.

d. Contract Termination

Any contract awarded as the result of a proposal submitted pursuant to this request may be canceled or terminated without cause upon 30 day written notification at the sole option of DOH. Any such termination shall not result in a breach of contract, nor shall any penalty or damages on account of such cancellation or termination be payable. DOH shall not be liable for costs incurred as a result of the termination.

Should termination of the contract occur, the Contractor will continue to provide services during a transition to the service provider designated by DOH. Payments for services during the transition period will remain at contractual levels. As part of this RFP, include a detailed reversion plan to permit such transfer of services (See Section D.1.a Part 7, page 33).

DOH reserves the right to cancel the contract with cause if the Contractor fails to comply with any of the requirements of the contract. DOH shall notify the Contractor in writing of specific instances of non-compliance. In instances where the Contractor has been notified of non-compliance with the terms of the contract and has not taken immediate corrective action, DOH shall have the right upon written notice of immediate cancellation to negotiate with another bidder or take whatever steps it deems necessary in order to maintain a continuity of service. The Contractor shall be responsible for any costs incurred by DOH as a result of this cancellation.

e. Prime Contractor Responsibility

The selected bidder will be required to assume responsibility for all services offered in the proposal (See Section C.2, page 14), whether or not that bidder produces them. Any subcontracting or assignment must receive the prior written approval of DOH and OSC. Because the accurate assignment of responsibility for Contractor performance is of prime concern to DOH, clearly explain the planned use of any and all subcontractors in the proposal. Current employees of the State of New York and consultants for DOH may not participate as subcontractors of the award. The following are considered by DOH to be subcontractors under the restrictions of this RFP:

- Suppliers of computer time or computer equipment not owned by the prime Contractor;
- Suppliers of operational services such as keypunching, report printing, miscellaneous clerical services not directly in the employment of the prime Contractor;
- Suppliers of computer software or computer operating systems not owned by the prime Contractor;
- Support personnel such as systems analysts or systems programmers not directly in the employment of the prime Contractor;
- Suppliers of check storage services; and
- Suppliers of check destruction services.

Failure to identify any such subcontractor in the Contractor's proposal shall be sufficient cause for disqualification of a proposal or cancellation of a contract.

Note: The Department of Health encourages the use of minority and women owned business enterprises. The bidder is encouraged to use and should identify any such enterprises where possible when proposing the use of subcontractors.

f. Acceptance Testing

Acceptance testing of the Contractor's system by the State will be required prior to implementation of the system. General acceptance testing criteria will be established by DOH, and DOH will work with the selected Contractor to develop criteria for the testing of specific components. Requirements for this contract will not be considered fulfilled, and any implementation fee bid will not be paid, until successful completion of acceptance testing.

D. PROPOSAL REQUIREMENTS

1. Response Format

The proposal response must include two separate proposals: a Technical Proposal and a Cost Proposal. The Technical Proposal and the Cost Proposal

should be submitted in separate sealed envelopes/packages and placed in a third package. Bidders are to provide two (2) signed originals and five (5) signed copies of their proposal. Additionally, bidders are requested to provide responses on CD/DVD (separate disks for Technical and Cost Proposals) in read-only format.

Submit proposals in the following format with the following headings. The proposals should include the information requested in the table below. Proposals that do not include the mandatory requested items contained in this section **will not be considered**. Bidders are advised to use the Bidder's Response Checklist, *Attachment 12 (page 90)*, to ensure that all required information is appropriately submitted. Proposals shall be direct, clear and concise.

Technical Proposal

2 originals and *5 copies* of the following in Sealed Envelope/Package #1:

- Transmittal Letter
- Table of Contents
- Part 1 - Executive Summary
- Part 2 - General Bidder Requirements **(Mandatory)**
- Part 3 - Demonstration of Corporate Ability to Perform **(Mandatory)**
- Part 4 - Conflict of Interest **(Mandatory)**
- Part 5 - Scope of Work **(Mandatory)**
- Part 6 - Implementation Plan **(Mandatory)**
- Part 7 - Disaster Recovery Plan **(Mandatory)**
- Part 8 - Reversion/Transfer Plan **(Mandatory)**
- Part 9 - Project Staff Resumes **(Mandatory)**
- Two signed originals and five copies of the Vendor Responsibility Questionnaire (Attachment 22) **or** Vendor Responsibility Attestation (Attachment 15)

Note: *If the Vendor Responsibility Questionnaire is submitted online, the Bidder should complete and include the **Vendor Responsibility Attestation** in the Technical Response envelope.*

Cost Proposal

2 originals and *5 copies* of the following in Sealed Envelope/Package #2

- Part 10 - Cost Proposals **(Mandatory)**
- Two signed originals and five copies of the "New York State Department of Health Lobbying Form" (Attachment 16)
- Two signed originals and five copies of the "M/WBE Utilization Plan" (Attachment 21)

a. **Technical Proposal Components**

(In a separate sealed envelope/package labeled “WIC Banking RFP Technical Proposal”)

All copies of the technical proposal should be submitted together, in a separate, sealed envelope/package.

Transmittal Letter

The transmittal letter should include the following:

- The name of the organization submitting the proposal.
- The name and telephone number of a contact person.
- A reference to the proposal number and title “Request for Proposal for Banking Services for the New York State WIC Program.”
- The signature of an individual legally authorized to bind the bidder to the proposal and to a contract.

Table of Contents

The proposal should contain a Table of Contents that includes the beginning page numbers for each section of the proposal.

Part 1 – Executive Summary

The Executive Summary should include a brief synopsis of major points contained within the technical proposal, including proposed procedures, operations and systems, company profile, relevant experience, etc.

Part 2 – General Bidder Requirements

The following items must be included in the response or the proposal will be rejected and not scored:

- A statement confirming that the bidder is a commercial bank and is designated by the Office of the State Comptroller as a depository bank.
- Documentation proving to the satisfaction of DOH the bidder maintains current membership in both the National Automated Clearing House Association and Federal Reserve Direct Wire System.
- A statement confirming that the bidder commits to pledge collateral to secure the State’s interests in a depository account in accordance with Sections 105 and 106 of the State Finance Law.

Part 3 – Demonstration of Corporate Ability to Perform

The response should also include:

- A description of the bidder's corporate skills and computer resources that embody the experience, competence and capacity necessary to perform the services solicited by this RFP.
- A description of the three most comparable projects that the bidder has been involved in within the last five years. The description should not exceed one page per project. Any page after page 1 will not be reviewed. For each reference, include the name of a company contact, an address, a phone number, and a description and dates of the service provided to the business. Governmental and non-governmental experience entailing high volume check processing of approximately 1,000,000 items per month or more will be considered.
- A description of the corporate structure of the bidder and all parent corporations and of any related corporations that will be involved in the performance of the RFP.
- A reference list of other independent businesses which have purchased services from the bidder similar to those solicited in this RFP. Include the name of a corporate contact, an address, a phone number, and a brief (one paragraph) description of the services provided to the business. DOH may visit or contact any or all of these references to verify information contained in the bidder's submission.

Part 4 - Conflict of Interest

Bidders must address the issue of potential conflicts of interest which might create the opportunity for improper use of the information or resources provided in this or in any other contract with the State of New York. Failure to disclose an existing or potential conflict of interest in the bidder's proposal shall be sufficient cause for disqualification of a proposal or cancellation of a contract. If no conflict of interest exists, the bidder must attest to that in its response. If the bidder fails to provide a response to Part 3, the proposal will be rejected and not scored.

Each bidder must:

- Fully disclose all relationships that exist between it and all related or independent entities which might have any relationship with the New York State WIC Program.
- Provide a detailed explanation of its corporate structure and of its relationship to any other corporate entities within the same corporate family which have an existing relationship with the State of New York.

- Provide a detailed explanation of how any relationship that might create the appearance of possible opportunities for improper activities will be modified to guarantee that no improper activity can take place.

Part 5 - Scope of Work

Bidders should include a detailed description of how the bidder proposes to handle each of the Banking System Requirements identified in Section C.2 (page 14) of this RFP. This part should be organized using the same numbering scheme and headings used in RFP Section C.2 (i.e., C.2.a. Account Requirement, C.2.a.i. Account Structure and Maintenance, etc.)

The bidder must describe how each of the components of the system will be handled. Identify any and all subcontractors to be used to perform any of the requirements.

It will be the responsibility of the Banking Contractor to assure that information currently available in all banking services related reports remains available in an accurate and comprehensive form. (Descriptions of reporting requirements are found in Section C.2.o page 23). A commitment to this effect must be included in the response to the RFP. Samples of statements and reports relative to the requirements of this RFP must be included in the bidder's proposal.

Part 6 - Implementation Plan

Bidders must include the detailed implementation plan for developing, initiating and operating this project within specified time limits.

- Planned contract effective date: **(refer to the Schedule of Key Events on the coversheet of this RFP).**
- Estimated date to begin processing test checks: **(refer to the Schedule of Key Events on the coversheet of this RFP).** (Processing refers to providing the services described in Section C.2.d, page 16 of this RFP.)

This plan will be subject to approval by DOH. The implementation plan should include:

- Identification of activities to be accomplished;
- Identification of the personnel needed and to be assigned to complete the activities, specified by title and level;
- A charted schedule of events in sufficient detail to enable effective monitoring of the implementation, operation, and turnover of tasks; and
- Identification of appropriate deliverables for each task.

The plan should provide sufficient detail in the above areas to enable DOH to have confidence in the bidder's ability to implement the WIC payment services.

Progress reports to DOH will be required. These reports must include any significant events, progress on development, staffing levels, problems encountered, planned activities, meetings held and other information deemed necessary by DOH or the Contractor. A reporting schedule will be developed jointly by DOH and the Contractor.

Part 7 – Disaster Recovery Plan

Bidders must include a description of a fully redundant disaster recovery system that will be implemented as part of this contract. Included in the description should be an explanation of on-going periodic testing procedures for the system for the duration of the contract. Periodic testing is an essential element of this system to assure that the system will work in the event of an actual emergency.

The bidder must provide a detailed disaster recovery plan and conduct an annual test of the disaster recovery system to demonstrate its effectiveness. The disaster recovery system should permit the continued processing of WIC checks and the continued generation of necessary WIC reports during any loss of capability at the primary Contractor site. DOH may require observers at such testing.

The bidder's existing disaster recovery system may be satisfactory, provided the bidder can demonstrate that it comprehensively covers the areas of concern specified above.

The disaster recovery facility is required to be located in the continental United States. The location of the disaster recovery site must be identified prior to program implementation completion, and must be tested and operational by the date WIC check processing begins.

Part 8 – Reversion/Transfer Plan

Bidders must include a description of the procedures that would be followed in the event of termination or expiration of this contract to assure uninterrupted service without loss of any information or management data.

The term of this contract will be for five years. At the end of that period, a competitive procurement process will be used to select a Contractor to provide banking services as required at that time. This contract may be subject to early termination in the event that NYS implements EBT-issued benefits prior to the end date of the contract resulting from this RFP. The contract will also contain clauses permitting cancellation with and without

cause under various circumstances (See Section C.3.d, page 27). In the event that a competitive procurement process or cancellation of the contract result in reversion of the banking services to DOH or the transfer to another organization, the successful bidder for this contract must be prepared to process all checks with issue dates prior to the effective date of termination of the agreement, regardless of presentment date.

In the proposal, describe how such a transfer would be implemented.

Part 9 – Project Staff Resumes

Bidders must identify corporate staff that will be responsible for managing this project. Provide concise resumes for all key individuals, focusing on the skills they will bring to the project and on their involvement in comparable projects, which are described in Part 3 - Corporate Ability to Perform.

Vendor Responsibility Questionnaire

Two (2) signed originals and five (5) copies of the Vendor Responsibility Questionnaire (Attachment **22**) or, if this was submitted online two (2) signed originals and five (5) copies of the Vendor Responsibility Attestation (Attachment **15**).

b. Cost Proposal Components

(In a separate sealed envelope/package labeled “WIC Banking RFP Cost Proposal”)

Part 10 – Cost Proposals

As previously stated, bidders must submit a cost proposal separate from the technical proposal. All copies of the cost proposal should be submitted, together, in a separate, sealed envelope/package. The bidder must present cost information in the form set forth on the Cost Proposal Sheets, included as **Attachments 9A and 9B (pages 82 and 84)**. Bids not submitted in this manner cannot be evaluated and compared with other bidders and may therefore be ruled non-responsive to this RFP.

The cost proposal should include the following:

Cover Letter

The cover letter should include the following:

- A statement specifying the contract period for which the quoted prices are effective. As stated in Section C.3.a (page 26), the price offered in the bid submission must remain in effect for 180 days from the date of submission.

- A statement acknowledging and referencing the earnings credit calculation described in ***Attachment 3 (page 62)***.
- The signature of an individual legally authorized to bind the bidder to the proposal and to a contract.

Annual Reports

Please include copies of annual reports from the last two years certified by an independent accounting firm, including financial footnotes, unqualified auditor opinion, and a management report of the auditor's findings.

Completed Cost Proposal Sheets (Attachments 9A and 9B):

Cost Proposal

The State of New York will pay for the services requested in this Request for Proposal by either compensating balance or direct fee payments. Each bidder must prepare two bid sheets (as described below) one detailing the cost of the same services should the State elect to pay by direct fee and one detailing the cost of the same services should the State elect to pay by compensating balances. The State reserves the right to change the compensation method at any time during the contract term with appropriate notification to the Bank. The State reserves the right to determine the method to be used to compensate the bank for services. The method may include, but is not limited to, direct payment, compensating balance, or a combination of both. The method of compensation shall be that which is expected to provide the lowest cost of Services to the State, as determined solely by the State. The State agrees not to change the method of compensation at a frequency greater than once annually, except in extraordinary circumstances, as determined by the State. The State shall provide the bank with at least ninety (90) days written notice of such a change.

Depending upon the method of compensation chosen, the following procedures will be used to determine the compensation:

Payment by Direct Fee

If the State elects to pay by direct fee, the State may choose to either offset the fee payment with Earnings Credits (as hereinafter defined) or request Earnings Credits reimbursement from the Bank. All excess Earnings Credits on a monthly basis must be carried forward to offset future payments throughout the life of the contract. Earnings Credits are to be calculated using the following formula:

Earnings Credits = (average available account balance) x (1-RR) x (ECR) x Time

Where:

RR = Federal Reserve Bank Reserve Requirement percentage (currently 10%)

ECR = Earnings Credit Rate, the determination of which is described below.

Time = number of days in period/365

The Earnings Credit Rate is the monthly average investment yield on the three-month Treasury Bill, as determined at the weekly auction and published in the New York Times or the Bank standard rate, whichever is greater. The Earnings Credit Rate shall be determined by the New York State Office of the State Comptroller and confirmed with the Bank.

Payment for services by direct fee should be billed by the bank to the (Agency) and will be paid in accordance with the voucher and audit procedures established by OSC.

Payment by Compensating Balance

If the State elects to pay by compensating balance, the value of the compensating balance shall be calculated using the same formula as shown above under "Payment by Direct Fee", provided, however, that the Earnings Credit Rate shall be determined based on an OSC computation which factors a three year average spread between the State's short term investment pool rate and the monthly average investment rate on the three-month Treasury Bill as determined at the weekly auction (currently 10 basis points) and published in the New York Times. The Earnings Credit Rate shall be determined by the Office of the State Comptroller and confirmed with the Bank. If payment is made via compensating balance, the Bank must provide a monthly bank account analysis electronically to OSC. This analysis must include the monthly volume and total costs associated with the Account. All excess Earnings Credits on a monthly basis must be carried forward to offset future payments throughout the life of the contract.

Please consider the above discussion of the Earnings Credit Rate in preparing the Schedules of Fees and Expenses.

1. The bidder must prepare **Attachment 9A (page 82)**, "Cost Proposal Sheet - Direct Fee" and **Attachment 9B (page 84)**, "Cost Proposal Sheet - Compensating Balances" detailing the cost of the service for both methods. The prices quoted will be in effect for the first three years of the contract term.

2. The volumes shown on the Cost Proposal Sheets will be used only to compare prices bid by banks responding to this RFP. Payments will be based on the actual monthly volumes and the bank will be reimbursed monthly for these services based on items processed for the preceding month.
3. A rate increase will be considered in years four and five of the final contract and must be requested in writing by the Contractor. Any cost increase will be based on the percentage increase in the Consumer Price Index-Urban Consumers (CPI-U) for the twelve-month period ending four (4) months before the anniversary date of the contract. The increase will be derived from the change in the CPI-U issued by the U.S. Department of Labor and may not exceed five percent. Any increase must have the approval of the Office of the State Comptroller.

The authoritative document in computing the CPI-U shall be the U.S. Department of Labor, Bureau of Labor Statistics, *Summary Data from the Consumer Price Index for All Urban Consumers (CPI-U), New York-Northern New Jersey-Long Island, NY-NJ-CT-PA table*. Base period: 1982-1984 = 100; Series ID – CUURA101SA0.
4. Prices quoted must not include any FDIC fees. The State may elect to pay for FDIC fees as an add-on to this contract or include the fees in the overall existing relationship with the bank and pay for them by compensating balance.
5. All costs associated with the requirements of this RFP must be incorporated into the Cost Proposal Sheets. Attachment 19, Program Statistics, details the estimated volume of work the contractor will be processing. Other than an implementation fee, no other add on costs are permitted. The State may, by amendment to the contract, entertain changes in fees under the following circumstances:
 - Billings for additional, enhanced or modified services requested by the State.
 - Other extraordinary cost increases which are beyond the control of the Bank.

Cost Proposal Sheet Preparation

The following items are specified on the Cost Proposal Sheets and prices for each must be filled in. If the quote for an item is zero, **enter \$0 – do not leave blank.**

- **Check Processing** – quote a price per check. (Do not include the cost of the services quoted individually below.)
- **Select Review** – quote a price per check
- **Investigative Check Retrieval** – quote a price per check
- **Check Photocopy** – quote a price per check
- **ACH Reimbursement** – quote a price per ACH transaction
- **ACH Reimbursement Statement** – quote a price per statement
- **ACH Debit Transmission File** – quote a price per file transmitted
- **SFFI processing** – quote price per SFFI
- **Implementation Fee**
 1. One payment of an implementation fee, if applicable, shall be made after all implementation tasks as detailed in the Implementation Plan have been completed, reviewed and approved by the State and all Acceptance Testing has been completed. The Contractor shall be paid the fixed implementation price bid in their proposal and provided in the resulting contract. The amount of the Implementation Fee of the WIC Banking Services project may not exceed 10% of the subtotaled amount for all Operating Costs listed on the Cost Proposal Sheets (Attachments 9A and 9B). Proposals with an Implementation Fee in excess of 10% of Operating Costs **will not be considered.** The Contractor shall submit one voucher for the implementation fee, payment to the Contractor shall be made after receipt of such voucher that is satisfactory to the Department and the Office of the State Comptroller.
 2. In the event that the Contractor fails to achieve all milestones or furnish all deliverables required, the portion of payment attributable, in the judgment of the State, to the milestones or deliverables for which the Contractor is deficient shall be withheld by the State, in its sole discretion, until such time as the milestones or deliverables are determined by the State to have been properly achieved or furnished.
 3. If the Contractor fails to complete successful Acceptance Testing of all computer processing functions and all tasks detailed in the Implementation Plan on a State approved schedule, a non-refundable penalty will be assessed and deducted from payments

due to the Contractor at a rate of \$3,000 per day for the first seven calendar days of delay and any portion thereof, and \$5,000 per calendar day and any portion thereof thereafter. Penalties will not be applied for any delays that are in the opinion of the State, attributable to the State. In addition, the Contractor will be required to reimburse the State for any expenses that exceed the amount of the bid, including operational payments made to the predecessor or other Contractor, as required to continue operations during the delay in implementation by the Contractor. Prospective Bidders should review Appendix D, paragraph C, of the sample contract (**Attachment 20 - page 106**) for contract provisions which may be enforced in the event of the unsuccessful operation of this project in the implementation phase or at any point during the contract term.

Note: **Attachment 19 (page 105)** of this RFP contains statistics on current WIC Program operations that may be used to develop cost proposals.

In addition, prior to award, **ST-220-CA Covered Agency (Attachment 14A)** must be submitted to the Department of Health and Form **ST-220-TD Contractor Certification (Attachment 14B)**, must be filed with the New York State Department of Taxation and Finance. These forms may be submitted with the bid as part of the Cost Proposal.

If your company elects NOT to submit a bid, you are requested to complete and return a copy of the “No-Bid Form” (see **Attachment 17**).

2. Method of Award

At the discretion of the Department of Health, all bids may be rejected. There will be separate Technical and Financial Evaluation committees scoring the RFPs. Amalgamated scores from each committee will be forwarded to the Selection Committee for final review and award recommendation. The evaluation of the bids will include, but not be limited to, the following considerations:

a. Evaluation Criteria

All bids must contain two separate proposals: a Technical Proposal (60 percent of total score) and a Cost Proposal (40 percent of total score). The Technical Proposal will be evaluated on two elements: **Quality of the Proposal** and **Experience with Comparable Projects and Related Activities**. The scores from the Technical Proposal and Cost Proposal will be used to produce a total score based on the assigned weights for each major section.

Normalization of scores

The Technical and Cost Proposals will be scored separately. The highest scoring Technical Proposal will be assigned a score of 60. The lowest Cost Proposal will be assigned a score of 40. Remaining bidder's scores will be pro-rated as follows:

- The Technical proposal will be normalized using the following formula:
 $X/Y*60$, where
X = raw score of technical proposal being scored, and
Y = the raw technical score of the highest scoring Technical Proposal.
- The cost component will be normalized using the following formula:
 $Y/X*40$, where
X = the total cost for the proposal being scored, and
Y = total cost for the lowest priced Cost Proposal.

The evaluation of the bids will include, but not be limited to the following considerations:

i) Technical Proposal

60% of Total Score

The Evaluation Committee will rate the Technical Proposals. All scored items in each major response section will be rated on a scale from 0 to 4 points. The highest scoring bidder will receive 60 points, the maximum number of points available for the technical proposal. Other bidders will be awarded points proportionally based on the highest scoring technical proposal.

1. Quality of the Proposal

Includes:

- Part 1 - Executive Summary
- Part 2 - General Bidder Requirements
- Part 4 - Conflict of Interest
- Part 5 - Scope of Work
- Part 6 - Implementation Plan
- Part 7 - Disaster Plan
- Part 8 - Reversion/Transfer Plan

The RFP Evaluation Committee will carefully review the following factors in evaluating the quality of the proposal:

- how well does it satisfy the requirements detailed in the RFP (including understanding the nature and magnitude of the project);
- the comprehensiveness of the banking system requirements, selection of alternatives, and the management of the project;
- the specific operations, procedures, systems, and support proposed.

2. Experience with Comparable Projects and Related Activities

Includes:

- Part 3 - Demonstration of Corporate Ability to Perform
- Part 9 - Project Staff Resumes

The RFP Evaluation Committee will review the following factors relative to bidder's experience:

- experience in developing, implementing, and operating comparable projects;
- Bidder's employees' experience. DOH expects the bidder to provide experienced, high-level staff, knowledgeable in the areas of work specified in this RFP. The bidder must assign sufficient staff resources for the successful initiation and ongoing operation of the project.

The RFP Evaluation Committee may contact current corporate clients to determine their experience with the bidder and verify information contained in the bidder's submission. References should have had experience with comparable projects.

ii) Cost Proposal

40% of Total Score

The Evaluation Committee will evaluate costs based on estimated units of service for specific tasks (*see Attachment 19, page 105*). These tasks are included in the Cost Proposal Sheets (*Attachments 9A and 9B, pages 82 and 84*). The lowest bidder will receive 40 points, the maximum number of points available for the cost proposal. Other bidders will be awarded points proportionally based on the lowest bid.

In the event of a failure to agree to terms for a contract with the bidder initially selected by the Evaluation Committee, the next highest scoring bidder will be considered.

Any contract resulting from this RFP will be based upon the written bids received. Accordingly, a proposal should contain the most favorable terms, from both a cost and technical standpoint, which the bidder can submit. However, if clarification is needed on a proposal prior to scoring, the Evaluation Committee may, at its sole discretion, provide a bidder with an opportunity to submit a written explanation to members of the Evaluation Committee. It should be noted that information included in this correspondence will only be used to clarify information contained in the original written proposal, and will become part of the RFP record.

Proposals which are not fully responsive to the requirements of this RFP will be rejected.

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

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

E. ADMINISTRATIVE

1. Issuing Agency

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

The WIC Program is administered by the Bureau of Supplemental Food Programs within DOH's Division of Nutrition. **Attachment 1 (page 58)** contains the Bureau's organizational chart, noting key staff involved in the administration of the WIC Banking Contract.

The terms and conditions of the State's RFP supersede any conflicting terms and conditions submitted by the Contractor unless waived by the State or modified and mutually agreed to in writing.

2. Inquiries

Any questions concerning this solicitation should be submitted in writing by 5:00 PM Eastern Time on the date indicated on the cover of this RFP. Questions

should be submitted via an email to wicrfp@health.state.ny.us or by delivery to the following address:

James Featherstone
NYS Department of Health
Division of Nutrition
Bureau of Supplemental Food Programs/RPOU
150 Broadway, 6th Floor West
Albany, NY 12204

There will be no bidders' conference. Telephone calls regarding this RFP will not be accepted. Potential bidders are required to reference the RFP page and/or section to which a question pertains. A copy of the questions and answers, as well as any RFP updates and/or modifications, will be posted on the Department of Health's website at www.health.ny.gov/funding/ by the date indicated on the cover of this RFP. Any answers to questions provided will not be considered final until they are released in writing. Bidders wishing to receive these documents via mail must send a request in writing, to the Department at the address above.

3. Notice of Intent to Bid

Prospective bidders may notify DOH of their intention to bid by completing and submitting a Notice of Intent form, **Attachment 2 (page 60)**, by the date listed on the cover of this RFP. A Notice of Intent is not binding on either party, but will serve to alert DOH of a bidder's intention to submit a proposal in response to the RFP. Submission of a Notice of Intent will ensure that the potential bidder will receive all correspondence and information distributed by DOH on this RFP, including any addenda and responses to questions.

One original signed Notice of Intent and two (2) copies should be submitted to:

Roberta Hayward, NYS WIC Director
Bureau of Supplemental Food Programs
Division of Nutrition
NYS Department of Health
150 Broadway, 6th Floor West
Albany, NY 12204

4. Addenda to the RFP

In the event it becomes necessary to revise any part of this RFP, an addendum will be posted on the DOH website.

5. Submission of Proposals

Proposals shall be prepared in accordance with the requirements stated in this RFP. All documentation requested under the Response Format section (Section D.1, page 28) must be provided at the time the proposal is submitted. As stated in Section D.1, the Technical Proposal and the Cost Proposal must be labeled in separate envelopes/packages and enclosed in a third package.

Interested organizations are required to submit two (2) original and five (5) signed copies of their proposal not later than the date and time listed on the coversheet of this RFP to the following address:

Roberta Hayward, NYS WIC Director
Bureau of Supplemental Food Programs
Division of Nutrition
NYS Department of Health
150 Broadway, 6th Floor West
Albany, NY 12204

The outside cover of the sealed package should be clearly marked:

"Banking Services for the New York State WIC Program"
(Bidder's Name)
RFP Number: 1208161128

It is the bidders' responsibility to ensure that bids are delivered to the Division of Nutrition's office prior to the date and time of the bid due date. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to the Division of Nutrition will not be considered. Bidders mailing their proposals or using a commercial delivery service shall allow sufficient time for delivery by the date specified. Proposals received after the date and time specified on the coversheet of this RFP will not be considered.

Proposal packages received by **the Due Date listed on the coversheet of this RFP** will be opened in the offices of the Division of Nutrition. **There will be no public bid opening.** Proposals will not be available for bidders to review until after the award of the contract. Sealed cost proposals will be kept in a locked file and only opened if the bidder's technical proposal passes review. At least three State representatives will witness the technical and cost proposal bid openings.

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

Receipt of these bid documents does not indicate that the Department of Health's (DOH) Division of Nutrition (DON) has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

6. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO
 1. Reject any or all proposals received in response to the RFP;
 2. Withdraw the RFP at any time, at the agency's sole discretion;
 3. Make an award under the RFP in whole or in part;
 4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
 5. Seek clarifications and revisions of proposals;
 6. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
 7. Prior to the **bid opening**, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
 8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
 9. Change any of the scheduled dates;
 10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
 11. Waive any requirements that are not material;
 12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
 13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
 14. Utilize any and all ideas submitted in the proposals received;
 15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening; and,
 16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

7. Payment

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

- Preferred method: Email a .pdf copy of your signed voucher to the New York State Business Services Center (BSC) at:
DOHaccounts payable@ogs.ny.gov
- Alternate Method: Mail vouchers to BSC at the U.S. postal address to be specified in the contract.

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

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

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

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

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

Payment under this contract will be made on a monthly basis and will be based on the performance of specific tasks (see Section C.2, page 14). Payment will be based on various performance standards such as number of checks processed.

Within the parameters of this RFP, specific tasks and performance standards will be identified during the contract development period.

Payment will be made upon the successful performance of each task and upon submission of an itemized standard State Voucher. Payment may be withheld by DOH in the event of late or unsatisfactory performance.

8. Term of Contract

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

The proposed contract start date is **listed on the coversheet of this RFP**. The contract term will be for a period of five years.

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.

This contract may be subject to early termination in the event that NYS implements EBT-issued benefits prior to the end date of the contract resulting from this RFP.

9. Debriefing

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

10. Protest Procedures

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

11. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user

assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders must also complete and submit the Vendor Responsibility Attestation (*Attachment 15, page 96*).

12. State Consultant Services Reporting

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

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

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

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

13. 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.

14. 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.

15. 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:

www.dhSES.ny.gov/ocs/breach-notification/

16. 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.

17. Piggybacking

New York State Finance Law section 163(10)(e) (see also 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.

18. Contractor Requirements and procedures for Business Participation

Opportunities for New York State certified Minority and Woman Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

NEW YORK STATE LAW

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

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

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

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

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

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

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

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. New York State Department of Health may disqualify a Bidder as being non-responsive under the following circumstances:
 - a) If a Bidder fails to submit a MWBE Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract.

Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

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

Equal Employment Opportunity Requirements

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

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

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

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or

termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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 F - Fee Schedule (the Bidders Cost Proposal Sheet)
- ❑ APPENDIX G - Notices
- ❑ APPENDIX M - Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures
- ❑ APPENDIX X - Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

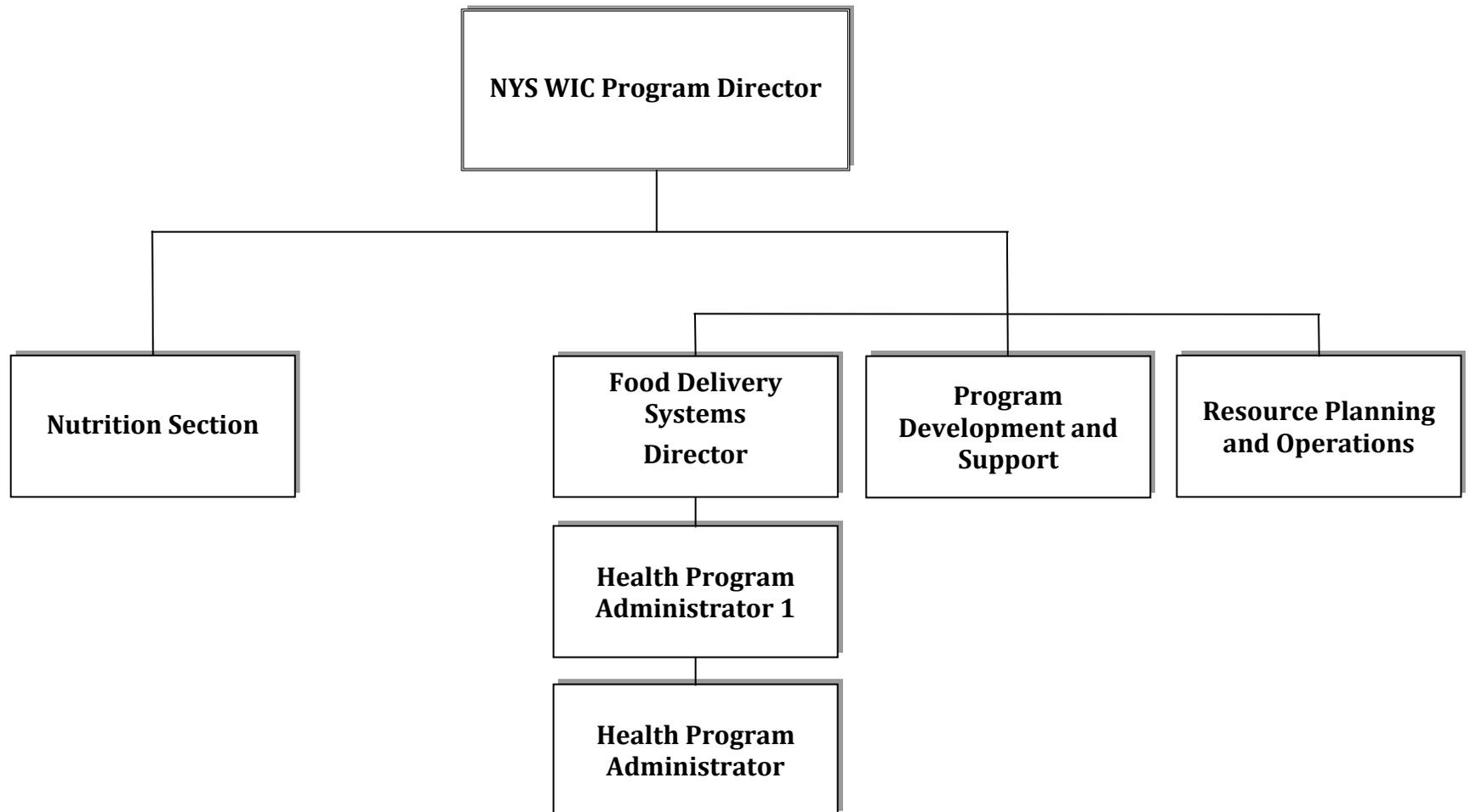
G. ATTACHMENTS

- ATTACHMENT 1 - ORGANIZATIONAL CHART
- ATTACHMENT 2 - NOTICE OF INTENT
- ATTACHMENT 3 - EARNINGS CREDIT
- ATTACHMENT 4 - SAMPLE WIC CHECK
- ATTACHMENT 5A - CHECK ISSUANCE FILE LAYOUT
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- ATTACHMENT 13 - SAMPLE MANUAL CHECK
- ATTACHMENT 14A - CONTRACTOR CERTIFICATION FORM ST 220CA
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- ATTACHMENT 15 - VENDOR RESPONSIBILITY ATTESTATION
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- ATTACHMENT 19 - PROGRAM STATISTICS
- ATTACHMENT 20 - SAMPLE CONTRACT
- ATTACHMENT 21 - M/WBE PROCUREMENT FORMS
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- ATTACHMENT 23 - UNDERTAKING BANK DEPOSITS

ATTACHMENT 1 - Organizational Chart

Attachment 1 Organizational Chart

Division of Nutrition – Bureau of Supplemental Food Programs		
Bureau of Supplemental Food Programs	5/01/2013	Positions



ATTACHMENT 2 - Notice of Intent

ATTACHMENT 2

NOTICE OF INTENT TO DEVELOP A PROPOSAL IN RESPONSE TO RFP

This is to notify the New York State Department of Health of this bidder's intention to develop a proposal in response to the RFP "Banking Services for the New York State WIC Program." It is understood that this Notice of Intent is not binding on either party but simply alerts the Department of Health of the bidder's intentions and assures that the bidder will receive all further correspondence on this RFP.

This Notice should be returned to:

Roberta Hayward, WIC Director
Bureau of Supplemental Food Programs
NYS Department of Health
150 Broadway, 6th Floor West
Albany, NY 12204

PROSPECTIVE BIDDER'S INFORMATION

Organization Name:

Organization Address:

Street/PO Box _____

City _____ State _____ Zip Code _____

Telephone (____) _____ FAX (____) _____

E-Mail Address _____

Authorized Signature _____

Print Name _____

Date _____

ATTACHMENT 3 - Earnings Credit

ATTACHMENT 3
EARNINGS CREDIT

The Contractor will be required to calculate interest on the average daily available balance contained in the account. The interest amount must be calculated using the following formula:

$$\text{Earnings Credits} = (\text{average available account balance}) \times (1 - \text{RR}) \times (\text{ECR}) \times \text{Time}$$

Where:

RR = Federal Reserve Bank Reserve Requirement percentage (currently 10%)

ECR = Earnings Credit Rate, the determination of which is described below.

Time = number of days in period/365

The Earnings Credit Rate is the monthly average investment yield on the three-month Treasury Bill, as determined at the weekly auction and published in the New York Times. The Earnings Credit Rate shall be determined by the New York State Office of the State Comptroller and confirmed with the Bank.

The interest must be calculated by the Contractor each month and applied as a credit to the monthly vouchers. The calculation must be indicated on the voucher.

ATTACHMENT 4 - Sample WIC Check

ATTACHMENT 4

SAMPLE WIC CHECK

STATE OF NEW YORK DEPARTMENT OF HEALTH WIC PROGRAM2	PARTICIPANT	48330134 - Participant, TestChild	NOT GOOD BEFORE	NOT GOOD AFTER	
	AGENCY	283 - Test Agency 283	01/12/2012	02/10/2012	
FOR THESE ITEMS ONLY - REFER TO WIC ACCEPTABLE FOOD CARD		PAY TO: VOID	383888796 ³		
2 16-Ounces WIC Bread 1 16-Ounce WIC Cheese 1 Dozen Eggs 3 Gallons +1 Quarts Nonfat or 1%LowFat Milk 2 64-Ounces Container or 16 oz Concentrate WIC Juice			NOT TO EXCEED *52.47*		
KeyBank, Albany, NY		CHECK NOT VALID UNLESS STAMPED ABOVE BY NYS AUTHORIZED WIC VENDOR AND DEPOSITED BY 03/12/2012		PAY EXACTLY	
-29-70 213		12012		DOLLARS	CENTS
THE BACK OF THIS CHECK CONTAINS A SECURITY MARK. DO NOT ACCEPT WITHOUT HOLDING AT AN ANGLE TO VERIFY SECURITY MARK. IMPROPER USE OF THIS CHECK IS SUBJECT TO STATE AND FEDERAL PROSECUTION.		X SIGNATURE OF PARTICIPANT AT REDEMPTION MUST MATCH SIGNATURE ON WIC I.D. CARD. NOT NEGOTIABLE UNLESS SIGNED.			
⑈3838887963⑈ ⑆021300705⑆ 710 00 399 9⑈					

ATTACHMENT 5A - Check Issuance File Layout

ATTACHMENT 5A

CHECK ISSUANCE FILE LAYOUT

Element Label	Start Position	Length	Notes
Food Instrument Number	1	10	Valid Check Numbers (check digit is MOD 9 DR)
WIC Account Number	11	9	WIC Bank Account Number
Food Instrument Valid Begin Date	20	8	This is the Issue Date. It is the check's "Not Good Before" date. Checks presented prior to this date will reject as "post dated". Checks presented more than 65 days after this date will reject as "stale dated".
Food Instrument Valid End Date	28	8	The check's "Not Good After" date.
Food Instrument Not to Exceed Amount	36	12	Check cannot be paid above this maximum amount.
Food Instrument Status Code	48	1	'I' for Issued, 'V' for Void, 'O' for Stop Payment, 'J' for Rejected or 'S' for Stale Dated.
Formula Indicator Flag	49	1	'0' = non-formula check, '1' = formula check.
Compliance Buy Flag	50	1	'0' = non-compliance buy check, '1' = compliance buy check. All compliance buy checks must be paid as presented.
Reimbursement Flag	51	1	'0' = the check status code is 'I' (Issued), '2' = the check status code is 'J' (Rejected). A reimbursement code of '2' indicates that a reimbursement amount has been provided (as requested by the WIC bank). The reimbursement code should never be equal to '1'. The WIC bank sends a reimbursement code of '1' to WICSIS (through the Paid/Not Paid file) to request a reimbursement amount. A reimbursement code of '0' means no reimbursement amount has been requested or provided.
Reimbursement Amount	52	12	The reimbursement amount (for check that has been flagged for reimbursement). Currently not used – zero filled.
Total Record Length		63	

Note: The bidder will be required to accommodate any changes to this layout at no additional cost. File layout changes are not considered enhanced or modified services.

ATTACHMENT 5B - Vendor File Layout

ATTACHMENT 5B
VENDOR FILE LAYOUT

Element Label	Start Position	Length	Notes
Transaction Type	1	1	Add, Update, Cancel, Reinstate
Vendor Number	2	6	Vendor Number (stamped on checks)
Vendor Owner ID	8	6	ID for Organization/Individuals who own the store
Food Stamp ID	14	7	Required for grocery stores
Vendor Name	21	30	Trade Name for the store
Vendor Address Line 1	51	30	Bank Statement mailing address
Vendor Address Line 2	81	30	Bank Statement mailing address
Vendor City	111	25	Bank Statement mailing address
Vendor State	136	2	Bank Statement mailing address
Vendor Zip	138	9	Bank Statement zip (5 + 4)
Vendor Type	147	1	Type is Grocery or Pharmacy.
Bank of Deposit Router Transit Number	148	9	Bank of Deposit Router Transit Number
Bank of Deposit Account Number	157	17	Bank of Deposit Account Number (receives deposits of WIC checks)
Bank of Deposit Name	174	28	Bank where vendor deposits WIC checks
Bank of Reimbursement Router Transit Number	202	9	Bank of Reimbursement Router Transit Number
Bank of Reimbursement Account Number	211	17	Bank of Reimbursement Account Number
Bank of Reimbursement Name	228	28	Bank receiving electronic reimbursement of exception checks
Filler	256	15	Filler
Total Record Length		270	

Note: The bidder will be required to accommodate any changes to this layout at no additional cost. File layout changes are not considered enhanced or modified services.

ATTACHMENT 5C - Farmer Vendor File Layout

ATTACHMENT 5C

FARMER VENDOR FILE LAYOUT

Element Label	Start Position	Length	Notes
TRANS-TYPE	1	1	A = New vendor U = Change of Information C = Vendor terminated
VENDOR-ID	2	6	WICIS Vendor ID - 000001-005000
OWNER-ID	8	6	Owner ID for Chain stores
FOOD-STAMP-ID	14	7	Food Stamp ID for groceries only
TRADE-NM	21	30	Vendor's Trade Name
VEND-ADDR-1	51	30	Vendor Address line 1
VEND-ADDR-2	81	30	Vendor Address line 2
VEND-CITY	111	25	City of address
VEND-STATE	136	2	State code e.g. NY (New York)
VEND-ZIP-5	138	5	First five zip code of address
VEND-ZIP-4	143	4	Last four zip code of address
VEND-TYPE	147	1	Vendor type, 0=Farmers, 1=Pharmacy, 2=Groceries
VEND-BANK-ROUTE-NO	148	9	Vendor's bank of deposit routing number
VEND-BANK-ACC-NO	157	17	Vendor's bank of deposit account number
VEND-BANK-NAME	174	28	Vendor's bank name
VEND-REIM-ROUTE-NO	202	9	Vendor's bank of reimbursement routing number
VEND-REIM-ACC-NO	211	17	Vendor's bank of reimbursement account number
VEND-REIM-NAME	228	28	Vendor's bank of reimbursement name
FILLER	256	15	Filler space
Total Record Length		270	

Note: The bidder will be required to accommodate any changes to this layout at no additional cost. File layout changes are not considered enhanced or modified services.

ATTACHMENT 5D - Paid/Not Paid File Layout

ATTACHMENT 5D

PAID/NOT PAID FILE LAYOUT

Element Label	Start Position	Length	Notes
Check Number	1	10	Valid Check Number
Date Presented	11	8	Date of Presentment
Presented Amount	19	12	Dollar Amount of Presented Check (amount requested by the vendor)
Paid Amount	31	12	Dollar Amount Paid
Vendor ID	43	6	Vendor Number
FSPID	49	7	Food Stamp Number
Presentment Code	56	2	Presentment Code (see list). Reflects status of item (paid, rejected, etc.)
DOS Number	58	9	Internal tracking number used by bank contractor
Initial Presentment Date	67	8	Date of Initial Presentment
Initial Presentment Code	75	2	Presentment Code at Initial Presentment
Last Presentment Date	77	8	Date of Last Presentment (may be the same as Initial Presentment)
Last Present Code	85	2	Presentment Code at the Last Presentment
Presentment Number	87	3	Number of times a check has been presented for payment (no more than 2 are allowed)
Reimbursement Flag	90	1	Reimbursement Flag: '1'= bank flags check to request a reimbursement amount
Bank Account	91	12	WIC Bank Account Information
NTE Amount	103	12	Not to Exceed amount of presented check
Filler	115	14	Blank Space
Total Record Length		128	

In most cases, checks meet all edits and the "Paid Amount" equals the "Presented Amount". If the "Presented Amount" is greater than the "Not To Exceed" amount the check will be rejected. The "Not To Exceed" amount is the value provided in the Issuance File as the maximum payment value allowed for a check.

Note: The bidder will be required to accommodate any changes to this layout at no additional cost. File layout changes are not considered enhanced or modified services.

ATTACHMENT 6 - Presentment Codes

ATTACHMENT 6

PRESENTMENT CODES			
Code	Description	Code	Description
01	Missing Vendor Stamp	20	Second Presentment Stopped
02	Invalid Vendor Stamp/Number	21	Duplicate Presentment
03	Counterfeit Stamp	22	Invalid Serial Check Digit
04	Illegible Vendor Number	23	Override
05	Missing Signature	24	Post/Future Date
06	Other Alteration	25	Vendor # Not on File
07	Stale/Expired Date	26	Canceled Vendor
08	Exceeds Authorized Amount	27	Void/Unauthorized Voucher
09	Price in Pencil	29	Unauthorized Deposit Ban/Acct
10	Altered Amount	30	Original Check Can't be Located
11	Missing Price	31	2nd Presentment Not Permitted
12	Illegible Price	32	Non-WIC Item
13	Unauthorized Package	50	Paid Food Instrument
14	Altered Signature	81	Reimbursement Food Instruments
15	Altered Date	82	Reimbursement Zero Repay Instruments
17	Missing Issue Date	85	Deletion from Previous Paid Instruments
18	No Match to Master File	89	Vendor Update
19	Original Stopped	91	Aged Food Instruments

ATTACHMENT 7A - Check Rejection Codes

ATTACHMENT 7A

CHECK REJECTION CODES	
CODE	DESCRIPTION
1	Missing vendor stamp
2	Invalid vendor stamp or number
3	Counterfeit stamp
4	Illegible vendor number
5	No signature
6	Other Alteration
7	Stale/expired date (65 days past the Not Good Before date)
8	Exceeds authorized maximum amount
9	Price in pencil
10	Altered amount
11	Missing price
12	Illegible price
13	Unauthorized Food Package
14	Altered signature
15	Altered Date
17	Missing issue date
18	No match to master file
19	Original stopped
20	Second presentment stopped
21	Duplicate check
22	Invalid serial check digit
23	Override
24	Post/future date
25	Vendor number not on vendor file
26	Canceled vendor number
27	Void
29	Unauthorized Depositing Bank Account (select review only)
30	Original check cannot be located
31	Second presented not permitted
32	Non-WIC item

ATTACHMENT 7B - Check Rejection Codes By Priority

ATTACHMENT 7B

CHECK REJECTION CODES BY PRIORITY		
PRIORITY	CODE	DESCRIPTION
1	27	Void
2	26	Canceled Vendor Number
3	19	Original Stopped (Stop Payment)
4	02	Invalid Vendor Stamp/Number
5	24	Post/Future Date
6	07	Stale / Expired Date
7	08	Exceeds Authorized Maximum Amount
8	14	Altered Signature
9	13	Unauthorized Food Package
10	31	Additional Presentment Not Permitted
11	10	Altered Price
12	05	No Signature
13	15	Altered Date
14	11	Missing Price
15	12	Illegible Price
16	03	Counterfeit Vendor Stamp/Number
17	06	Other Alteration
18	17	Missing Issue Date
19	20	2nd Presentment Stopped
20	22	Invalid Serial Check Digit
21	25	Vendor Number Not On Vendor File
22	30	Original Check Could Not Be Located
23	32	Non-WIC Item
24	21	Duplicate Check Number
25	04	Illegible Vendor Stamp/Number
26	18	No Match To Master file
27	01	Missing Vendor Stamp
28	23	Override

ATTACHMENT 8 - Computing Environment

ATTACHMENT 8

COMPUTING ENVIRONMENT

DEPARTMENT OF HEALTH, DIVISION OF NUTRITION (DON)

Computer Configuration

All computer software proposed must be compatible with the DOH DON computer environment, as described below:

Data Base Servers

2x Dell PowerEdge 810 servers (Clustered) with dual 8-core processors, 64GB RAM connected to 48 TB SAN, running Windows Server 2008 R2 (enterprise edition) and Sybase ASE 15.0.2

Backup

1 Dell PowerEdge 810 server with Dual 8 Core processors, 16GB RAM running Windows Server 2008 R2 and Tivoli Storage Manager 6.2

VMware Virtual Hosts

6x Dell PowerEdge 810 servers with dual 8-core processors, 64GB RAM connected to 48 TB SAN, running VMware Vshphere 5 and Virtual Center 4

Support Functions

Support functions will be run on physical and virtual machines running Windows server 2008 R2.

ATTACHMENT 9A - Cost Proposal Sheet - Direct Fee

ATTACHMENT 9A

COST PROPOSAL SHEET - DIRECT FEE OPERATING COSTS

Service Code	Tasks	Unit of Service	Cost per Unit of Service*		Estimated Number of Units (60 months)	Total Costs
150100	Check Processing	per check		(x)	150,000,000	
N/A	Select Review	per check		(x)	750,000	
N/A	Investigative Check Retrieval	per check		(x)	39,000	
151341	Check Photocopy	per check		(x)	6,000	
250201	ACH Reimbursement	per item		(x)	570,000	
N/A	ACH Reimbursement Statement	per statement		(x)	60,000	
250501	ACH Debit Transmission File	per file		(x)	60	
999999	Special Formula Food Instrument Processing	per SFFI		(x)	6,000	
Operating Costs subtotal						
Implementation Fee (one-time fee not to exceed 10% of Operating Costs)						
TOTAL BID AMOUNT (Sum of Operating Costs and Implementation Fee)						

The price offered in the bid submission must remain in effect for 180 days from the date of submission.

*All proposed fees must be guaranteed for the first three years of the contract term.

Rate increases for years 4 and 5 must be formally requested in writing. Any fee adjustment for these years will be based on the change in the Consumer Price Index-Urban Consumers using the methodology detailed in RFP Section [D.1.b. Part 10.3](#).

**ATTACHMENT 9B - Cost Proposal Sheet - Compensating
Balance**

ATTACHMENT 9B

COST PROPOSAL SHEET - COMPENSATING BALANCE

OPERATING COSTS

Service Code	Tasks	Unit of Service	Cost per Unit of Service*		Estimated Number of Units (60 months)	Total Costs
150100	Check Processing	per check		(x)	150,000,000	
N/A	Select Review	per check		(x)	750,000	
N/A	Investigative Check Retrieval	per check		(x)	39,000	
151341	Check Photocopy	per check		(x)	6,000	
250201	ACH Reimbursement	per item		(x)	570,000	
N/A	ACH Reimbursement Statement	per statement		(x)	60,000	
250501	ACH Debit Transmission File	per file		(x)	60	
999999	Special Formula Food Instrument Processing	per SFFI		(x)	6,000	
Operating Costs subtotal						
Implementation Fee (one-time fee not to exceed 10% of Operating Costs)						
TOTAL BID AMOUNT (Sum of Operating Costs and Implementation Fee)						

The price offered in the bid submission must remain in effect for 180 days from the date of submission.

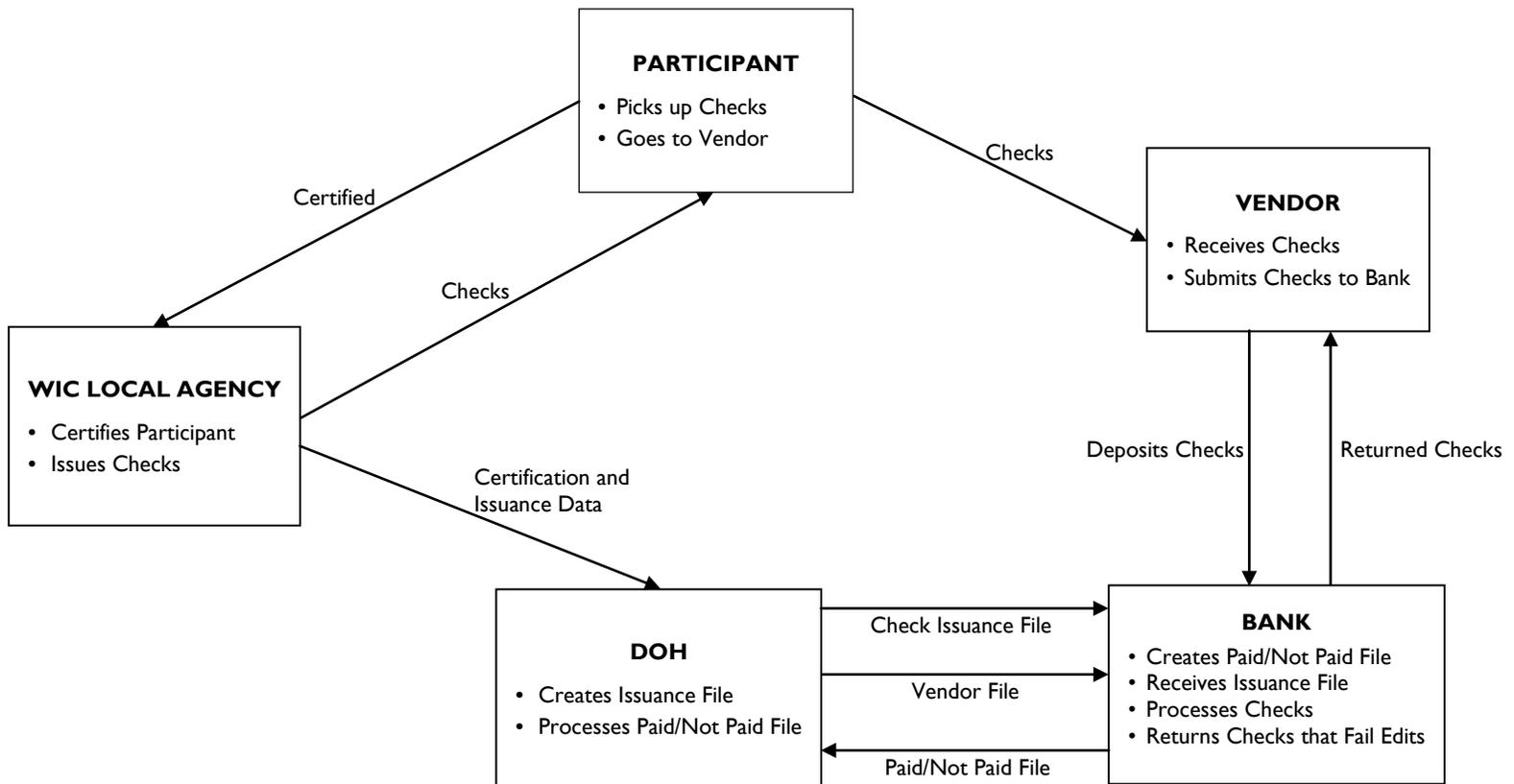
*All proposed fees must be guaranteed for the first three years of the contract term.

Rate increases for years 4 and 5 must be formally requested in writing. Any fee adjustment for these years will be based on the change in the Consumer Price Index-Urban Consumers using the methodology detailed in RFP Section [D.1.b. Part 10.3](#).

ATTACHMENT 10 - Flow of Check Information

ATTACHMENT 10

FLOW OF CHECK INFORMATION



ATTACHMENT 11 - On-Line System Required Fields

ATTACHMENT 11

ON-LINE SYSTEM

MINIMUM REQUIRED FIELDS:

WIC Bank Account Number

Check Serial Number

Status Code & Description (e.g. Issued, Void, Stop Payment, Rejected, Paid)

Status Updated (date Status Code is inserted)

Issue Date (Food Instrument Valid Begin Date)

Not to Exceed Amount

Paid Amount

Paid Date

Vendor Number

Total Number of Presentments

Presented Amount

1st Presentment Date

1st Presentment Code and Description

2nd Presentment Date

2nd Presentment Code and Description

(Sources of Information include Check Issuance File and Paid/Not Paid File)

ATTACHMENT 12 - Bidder's Response Checklist

ATTACHMENT 12

BIDDERS RESPONSE CHECKLIST

2013 WIC Banking Services Procurement

TECHNICAL PROPOSAL (Sealed Package # 1)

- Transmittal Letter
- Table of Contents
- Executive Summary (Part 1)
- General Bidder Requirements (Part 2)
- Demonstration of Corporate Ability to Perform (Part 3)
- Conflict of Interest (Part 4)
- Scope of Work (Part 5)
- Implementation Plan (Part 6)
- Disaster Plan (Part 7)
- Reversion/Transfer Plan (Part 8)
- Project Staff Resumes (Part 9)
- Vendor Responsibility Attestation (Attachment 15)
- Vendor Responsibility Questionnaire (Attachment 22)(if not filed online)

COST PROPOSAL (Sealed Package #2)

- Cost Proposals (Part 10)
- NYS Department of Health Lobbying Form (Attachment 16)
- M/WBE Utilization Plan (Attachment 21)

ATTACHMENT 13 - Sample Manual Check

ATTACHMENT 14A - N.Y.S Taxation and Finance Contractor Certification Form to Covered Agency ST-220-CA

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

http://www.tax.ny.gov/forms/form_number_order_st_y.htm

ATTACHMENT 14B - N.Y.S Taxation and Finance Contractor Certification Form ST-220-TD

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

http://www.tax.ny.gov/forms/form_number_order_st_y.htm

ATTACHMENT 15 - Vendor Responsibility Attestation

Vendor Responsibility Attestation

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

Choose one:

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

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

ATTACHMENT 16 - Lobbying Form

ATTACHMENT 17 - No Bid Form

NEW YORK STATE
DEPARTMENT OF HEALTH

NO-BID FORM

PROCUREMENT TITLE: _____ FAU # _____

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

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

- Please retain our firm on your mailing list.

_____ (Firm Name)

_____ (Officer Signature) _____ (Date)

_____ (Officer Title) _____ (Telephone)

_____ (e-mail Address)

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

ATTACHMENT 18 - Sample SFFI Form

**NEW YORK STATE DEPARTMENT OF HEALTH
WIC PROGRAM
SPECIAL FORMULA FOOD INSTRUMENT**

00000

LOCAL AGENCY

[] [] []	[] []	[] [] [] [] [] [] [] [] [] [] [] []	Formula Code	[] [] []
L.A. #	Site #	Participant I.D. #		
Participant Name _____				
		(Last Name)	(First Name)	
Local Agency Stamp (or Type)				
Vendor Identified to Accept Instrument _____				
This instrument allows the above named participant to receive:				
_____	-	_____	-	_____ of _____
# of Units	Unit Size	Concentrate, Powdered, Ready To Feed		Name of Formula
This instrument can be accepted by the vendor between _____ and _____				
			Not Good Before	Not Good After
Participant/Proxy Signature _____			Date _____	
Name of LA Staff Issuing Instrument (print) _____			Date _____	

VENDOR – Fill as written above

DO NOT ACCEPT THIS DOCUMENT IF INCOMPLETE OR ILLEGIBLE

# of Units Provided	Unit Size	Concentrate (C)	Powdered (P)	Ready To Feed (RTF)	Name of Formula	Cost per Unit	Discount	Total Cost
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

I certify that I received formula in the quantity and type specified above.

Participant/Proxy Signature _____ Redemption Date _____

VENDOR STAMP

Vendor Name and Address:

 _____ N.Y. _____

Phone Number () _____

I certify that the bill is just, true and correct; that no part thereof has been paid as stated and that the balance is actually due and owing, and that taxes from which the State is exempt are excluded. I understand this instrument must be submitted for payment within 60 days following the "Not Good Before" date.

Payee's Signature in Ink _____ Title _____ Date _____

CENTRAL OFFICE

Signature of CO Staff _____ Date _____

Pay yes no \$ _____ Flag yes no Batch # _____

DOH-3958 (10/04)

See Reverse Side for Instructions

STATE COPY

ATTACHMENT 19 - Program Statistics

ATTACHMENT 19

Program Statistics

Program participants		500,000
Vendors		4,400
Checks Redeemed	Monthly	2.5M
Check Redemption Value	Monthly	\$40M
Checks Redeemed	Annually	30M
Check Redemption Value	Annually	\$480M
Images for all Checks Received ¹	Monthly	>2.5M
Rejected Checks	Monthly	14,000
Items Submitted for Reimbursement	Monthly	12,000
Reimbursement Value	Annually	\$2M
ACH Reimbursements	Monthly	9,500
ACH Statements to Vendors for Reimbursements	Monthly	1,000
Special Formula Food Instruments	Monthly	100
Check Photocopy Requests	Monthly	100
Select Review	Monthly	12,500
Investigative Check Retrieval	Monthly	650

¹ Includes Redeemed and Rejected checks

ATTACHMENT 20 - Sample Contract

MISCELLANEOUS / CONSULTANT SERVICES

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

NYS COMPTROLLER'S NUMBER: C#
ORIGINATING AGENCY GLBU: DOH01
DEPARTMENT ID: 3450000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM
FROM:
TO:

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

FUNDING AMOUNT FOR CONTRACT
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

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

NYS VENDOR IDENTIFICATION NUMBER:

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

MUNICIPALITY NO. (if applicable)

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

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

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

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

Contract No.: C#

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

CONTRACTOR

STATE AGENCY

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

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

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

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

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

GLBU: DOH01
APPENDIX X

Contract Number: _____ Contractor: _____

Amendment Number X- _____

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

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

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

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

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

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

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.
(Value before amendment) (Initial start date) (Initial end 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)

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

the contract, the Department of Civil Service and the State Comptroller.

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

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

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

STATE OF NEW YORK
AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and

the State Comptroller, to the STATE's designated payment office in order to receive payment:

<insert agency contact and address for payment>

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

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

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

III. Term of Contract

- A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein

specified this agreement shall be deemed terminated and canceled.

IV. Proof of Coverage

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

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

- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
 - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - 2. DB-120.1 – Certificate of Disability Benefits Insurance OR
 - 3. DB-155 – Certificate of Disability Benefits Self-Insurance

V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

APPENDIX D
GENERAL SPECIFICATIONS

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

- c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

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

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

N. Date/Time Warranty

1. Definitions: For the purposes of this warranty, the following definitions apply:

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

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

2. Date/Time Warranty Statement

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

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

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

- O. No Subcontracting Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- P. Superintendence by Contractor The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.
- Q. Sufficiency of Personnel and Equipment If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the

authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

- R. Experience Requirements The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.
- S. Contract Amendments. This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

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

T. Provisions Upon Default

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

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

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

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

W. Contract Insurance Requirements

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

- a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
- b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

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

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

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

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

- c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
 - d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
 - e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
 - f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions.
 - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
 - h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
 - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department agency.
 - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Y. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

Z. Provision Related to Consultant Disclosure Legislation

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

AA. Provisions Related to New York State Procurement Lobbying Law The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New

York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

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

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

December, 2011

APPENDIX M

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

I. General Provisions

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

II. Contract Goals

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

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

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

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

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

III. Equal Employment Opportunity (EEO)

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

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

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

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

C. Form #4 - Staffing Plan

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

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

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

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

IV. MWBE Utilization Plan

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

V. Waivers

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

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

VI. Quarterly MWBE Contractor Compliance Report

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

VII. Liquidated Damages - MWBE Participation

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

ATTACHMENT 21 - M/WBE Procurement Forms

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

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

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

M/WBE Form#2: M/WBE Waiver Request

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

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

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

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

New York State Department of Health

BIDDER/CONTRACTOR M/WBE UTILIZATION PLAN

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title:	RFP/Contract No.

Description of Plan to Meet M/WBE Goals

--

PROJECTED M/WBE USAGE

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

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

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

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

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

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

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

New York State Department of Health

M/WBE UTILIZATION WAIVER REQUEST

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title:	RFP/Contract No.

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

Include attachments below to evidence good faith efforts:

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

Section 4: Signature and Contact Information

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

Submitted by : _____ Title: _____

Signature

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

Contractor Name:	
Contract Title:	Contract No.

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

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

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

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

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

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

Submitted by : _____ Title: _____

Signature

New York State Department of Health
M/WBE STAFFING PLAN

Check applicable categories: Project Staff Consultants
 Subcontractors

Contractor Name _____

Address _____

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

(Name and Title)

(Signature)

Date

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

M/WBE AND EEO POLICY STATEMENT

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

M/WBE

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

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

EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Name & Title

Signature & Date

New York State Department of Health
WORKFORCE EMPLOYMENT UTILIZATION REPORT

Check applicable categories: Project Staff Consultants
 Subcontractors

Contractor Name _____ Contract # _____

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

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

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

 (Name and Title)

 (Signature)

 Date

ATTACHMENT 22 - Vendor Responsibility Questionnaire

An electronic fill-in version of the *NYS Vendor Responsibility Questionnaire* can be found at:

http://www.osc.state.ny.us/vendrep/forms_vendor.htm

**ATTACHMENT 23 - State of New York Undertaking for
Bank Deposits and Assignment of Securities**

UNDERTAKING FOR BANK DEPOSITS AND ASSIGNMENT OF SECURITIES

WHEREAS, THE _____ **of**
_____, New York (hereinafter "Bank") has been duly designated in accordance with the provisions of law to receive and keep on deposit: such moneys received by the Commissioner of Taxation and Finance that are required by Section 106 of the State Finance Law to be deposited by the Commissioner to the credit of the Comptroller; any other moneys received by the Commissioner of Taxation and Finance, except as provided in Section 105 of State Finance Law, and deposited in the Bank by the Commissioner to the credit of the Comptroller; all moneys received by any other State officer or other person receiving moneys belong to the State of New York or for which such officer or other person may be responsible in an official capacity and which moneys are deposited in the Bank to the credit of such officer or other person; all moneys received by any State institution and deposited in its name in the Bank; all moneys received from the State by any charitable or benevolent institution supported in whole or in part by the State which moneys are deposited in the Bank to the credit of such charitable or benevolent institution; and all moneys including but not limited to moneys of any municipality, commission, authority or public corporation deposited by the Comptroller in the Bank in the name of the Comptroller or as an agent of the Comptroller, and

WHEREAS, the Bank is required by statute to execute and file in the Office of the State Comptroller its undertaking for the safekeeping and prompt payment of any moneys on deposit, with interest, if any.

WHEREAS, the Bank hereby executes and delivers such an undertaking to the people of the State of New York in the penal sum of an amount equal to the total of all moneys hereinabove described which are now or shall hereafter be on deposit in or held by the Bank to the credit of such public entities, which undertaking is secured, pursuant to the provisions of the Uniform Commercial Code, and any other applicable State law or federal law, by the deposit of the outstanding securities with the State Comptroller or any party designated by the State Comptroller.

NOW THEREFORE, the Bank in consideration of such deposits made or to be made therein, and for value received, does hereby undertake, covenant and agree to and with the People of the State of New York, to safely keep and well and faithfully account for all moneys, which are now or shall hereafter be on deposit in or held by the Bank, and will pay the same promptly at any and all times on legal demand therefore with interest on agreed balances at an agreed rate per annum, to be credited as applicable.

To secure its performance of this Undertaking, the Bank, pursuant to the Uniform Commercial Code and other applicable State law or federal law, does hereby pledge, transfer and assign securities to the State Comptroller for the purpose of granting a security interest in such securities to save harmless and indemnify the People of the State of new York and the depositor from and against all loss, both principal and interest, costs, damages, or expense of any kind or nature, that may be incurred for or on account of said funds and moneys heretofore or hereafter

deposited in or held by the bank and for which security is required by or pursuant to the provisions of law or for which the Bank shall in any way become liable to the State or the depositor;

The securities pledged, transferred and assigned pursuant to this undertaking and assignment shall be transferred to the Comptroller or a party designated by him for this purpose, and the Comptroller or such party shall confirm the receipt of such securities in writing to the Bank.

In the event that the Bank shall either (1) fail to pay to the State or other depositor any funds which the State or depositor has on deposit with the Bank in accordance with the terms of such deposit; or (2) suspend active operations or be determined insolvent by Federal or State officials having authority over the Bank, the Bank shall be in default and the State Comptroller may, in addition to any other remedies provided by law, sell any or all of the securities pledged pursuant to this undertaking and assignment.

And the Bank does hereby irrevocably constitute and appoint the Comptroller of the State of New York its lawful attorney to transfer said securities on the records of the transfer officer, at the transfer office, with full power of substitution in the premises.

On the withdrawal of all moneys so secured and closing and settlement of the account thereof, the Comptroller will return said securities to the Bank.

WITNESS the seal of the said bank and the signature of the _____
thereof, this _____ day of _____, 20 _____.

For the State Comptroller

