

NEW YORK STATE DEPARTMENT OF HEALTH

A Request for Proposal for

Bureau of Water Supply Protection

RFP No. 1209120256

Technical Assistance to Small Public Water Systems

Schedule of Key Events

RFP Release Date	October 22, 2012
Written Questions Due	4:00 pm ET on November 30, 2012
Registration for Bidders Conference Required by	November 9, 2012
Bidders Conference	November 15, 2012
Response to Written Questions and Questions Received at Bidders Conference	on or about December 28, 2012
Proposal Due Date	4:00 pm ET on January 31, 2013

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

DESIGNATED CONTACTS:

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

Joseph Zeccolo
NYSDOH, Fiscal Management Group
Corning Tower, Room 2266, Empire State Plaza
Albany, NY 12237
(518) 474-7896
jxz02@health.state.ny.us

Permissible Subject Matter Contacts:

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

- Submission of Written Questions:
- Participation in the Pre-Bid Conference:
- Submission of written proposals or bids:
- Debriefings:
- Negotiation of Contract Terms after Award:
- Minority and Women Owned Business Liaison:

John Helmeset, P.E.
NYSDOH, Bureau of Water Supply Protection
Corning Tower, Room 1119, Empire State Plaza
Albany, NY 12237
Phone: (518) 402-7650
jah20@health.state.ny.us

or

William Gilday, P.E.
NYSDOH, Bureau of Water Supply Protection
Corning Tower, Room 1119, Empire State Plaza
Albany, NY 12237
Phone: (518) 402-7650
wmg02@health.state.ny.us

For further information regarding these statutory provisions, see the Lobbying Statute summary in Section E.11 of this solicitation.

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A. INTRODUCTION

1. General Information

The New York State Department of Health (NYSDOH) protects and promotes the health of the citizens of New York State. Within the NYSDOH, the Bureau of Water Supply Protection (BWSP) has the primary responsibility for administering the Public Water System Supervision (PWSS) Program and for assuring that safe, potable water, in adequate quantities, is provided in New York State. This is accomplished through:

- Ensuring compliance with drinking water regulations at all Public Water Systems (PWS);
- Training and certification of water supply operators;
- Maintenance of a statewide database on individual PWS;
- Development and initiation of enforcement policies;
- Development and promotion of PWS emergency preparedness;
- Plan review;
- Maintenance of a water quality surveillance program; and
- Providing technical and emergency assistance to PWS.

The primary regulatory authority that oversees New York's PWSS program is the United States Environmental Protection Agency (EPA). The primary federal legislation governing public drinking water systems is the 1974 Safe Drinking Water Act (SDWA), including the 1986 and 1996 Amendments.

The NYSDOH will use Drinking Water State Revolving Fund (DWSRF) and Water Protection Coordination grant monies to support a technical assistance program for small community, non-community, and non-transient non-community public water systems.

2. Purpose

This Request for Proposal (RFP) is being issued to obtain the necessary services to provide technical assistance to enable PWS to:

- Make technical and administrative improvements;
- Perform necessary maintenance;
- Recover revenues to improve viability;
- Meet the regulatory requirements of the SDWA and Part 5 of the State Sanitary Code; and
- Continuing PWS Operations and/or recovery from emergency events.

Although it is anticipated that the majority of the technical assistance will be provided to small public water systems (serving < 3,300 people), assistance will not be limited to this size water system and larger water systems may also receive these services, as needed. A 5-year contract will be awarded to one successful bidder. Technical assistance is needed in areas including:

- Treatment technology and optimization;
- Operator certification;

- Capacity development;
- Completion of consumer confidence reports and operation manuals;
- Source water assessment and protection;
- Emergency preparedness;
- Response and recovery from emergency events;
- Compliance with the regulatory requirements of the Enhanced Surface Water Treatment Rule, Microbial/Disinfection By-Products Rule, Groundwater Rule, Lead and Copper Rule, Lead and Copper Rule Minor Revisions, Public Notification Rule, Arsenic Rule, Long Term 2 Enhanced Surface Water Treatment Rule, Stage 2 Disinfectants/Disinfection Byproducts Rule, Radionuclides Rule, Groundwater Rule, and the Consumer Confidence Report Rule;
- Enhancing monitoring, disinfection, and other treatment practices
- Increasing security measures;
- Improvement to minimum water pressures; and
- Safeguarding distribution system integrity from leakage and waste, cross-connections and bio-film problems.

B. BACKGROUND

Currently there are approximately 10,000 PWS in New York State, of which 3,500 are community water systems (CWS), 5,800 are transient non-community water systems (NCWS), and 700 are non-transient non-community water systems (NTNCWS). In general, a greater number of federal and state drinking water regulations apply to community water systems than to NCWS and NTNCWS. Compliance with the many regulations is particularly difficult for the CWS serving populations fewer than 3,300 located in New York State. These small systems account for >90% of the CWS in New York State. While the primary emphasis in technical assistance will be placed on small community systems, some technical assistance services in applicable regulatory areas can also be expected for New York's NTNCWS.

Small water systems, by their very nature, lack economies of scale that would enable them to easily modify and adjust their operations to comply with increasingly complex regulations and best management practices. Challenges affecting small water systems include a lack of adequate preventive maintenance programs, delays on equipment modernization, an inability to retain qualified consulting services, and difficulty in funding necessary analytical testing services. Unaddressed, these factors can then lead to a failure to meet state and federal regulations and accepted performance standards.

C. DETAILED SPECIFICATIONS

1. Scope of Work

The contractor will provide direct on-site Technical Assistance (TA) to water plant operators, superintendents and local officials throughout New York State for five years. The contractor's TA providers will visit small Public Water Systems (PWS) including manufactured home park water systems to provide on-site technical assistance.

It is expected that at least 2,000 hours, or at least one half of the contract effort, will be to provide **direct on-site** technical assistance for at least 210 public water systems for each year of the contract. It is expected that the technical assistance will be delivered continuously over each contract year. This assistance will deal with on-going regulatory, operational, management, financial, and technical deficiencies, including emergencies. The contractor will provide all staff and equipment necessary to provide these services.

In addition to direct on-site TA visits, the contractor will also be required to complete technical products for individual PWS and to provide formal training to groups of water operators throughout the State on relevant topics as determined by NYSDOH and the contractor. At a minimum, the training will address the technical, financial and managerial aspects of operating and managing a water system to ensure viability of small water systems.

2. Summary of Services

A list of requirements and/or services to be provided by the contractor must include, but not be limited to, the following:

- Participate in kick off conference call;
- Develop technical assistance implementation work plan;
- Attend NYSDOH Train-the-Trainer sessions;
- Prepare and submit on-site reports for each field visit, including the completion of data entry into a reporting database designated by the State;
- Prepare and submit progress reports every two weeks in a format designated by the State;
- Attend quarterly progress meetings with the NYSDOH TA Coordinator;
- Assist small PWS with compliance;
- Assist small PWS with vulnerability assessments and emergency response plans;
- Assist small PWS with mapping and/or locating water system infrastructure;
- Assist small PWS in developing a rate structure;
- Evaluate and troubleshoot PWS problems/violations;
- Provide recommendations/solutions to PWS;
- Assist with the development of operation and maintenance plans and schedules;
- Assist with the development of Standard Operating Procedures (SOPs) and/or Emergency Response Plans (ERPs);
- Assist with PWS emergency preparedness and recovery;
- Provide relevant training to groups of operators, system owners, municipal officers, etc.;
- Collect water samples for analysis;
- Evaluate PWS current operating procedures;
- Locate funding and assist with funding application;
- Coordinate activities with other TA providers;
- Assist with set-up and operation of emergency equipment; and
- Coordinate Technical Assistance with the NYSDOH TA Coordinator and local health departments.

3. Tasks and Deliverables

A detailed breakdown of required tasks and deliverables follows.

Task A: Develop TA Implementation Work Plan

The contractor is required to develop a technical assistance (TA) work plan that will describe in detail how the contractor intends to implement the requested services outlined in this RFP. This work plan will be reviewed annually by the NYSDOH TA Coordinator and will be subject to modifications and updates as deemed necessary.

The Task A deliverables will be: a TA Implementation Work Plan approved by NYSDOH; and annual work plan updates completed at the beginning of each contract year as needed and directed by NYSDOH.

Payment will be made for the billing period in which the work plan was completed and approved by the contract manager. Payment for the billing period will be made upon receipt and approval of a standard voucher for work satisfactorily completed during the previous 2 month period. Written notification of acceptance of the deliverables will be provided to the Contractor by NYSDOH in accordance with the notification methods allowed in Appendix G of the contract.

Task B: Notification to Local Health Departments

Within 20 days of the kick-off conference call, the contractor, using the database information provided by NYSDOH, will notify each NYSDOH regional office, NYSDOH district office, and each county health office of the availability of technical assistance services, what services they can provide, the name of the Contact Person/Project Director, and how to contact him/her to request information or assistance. Notification will also be made at the start of each contract year, or as otherwise directed by NYSDOH. Notification means and language will be pre-approved by the NYSDOH contract manager.

Payment will be made for the billing period in which satisfactory notification was completed based upon verification by the contract manager. Payment for the billing period will be made upon receipt and approval of a standard voucher for work satisfactorily completed during the previous 2 month period.

Task C: Provide Direct Technical Services

The Contractor will begin providing direct TA to PWS within 5 days of completing NYSDOH training on NYSDOH: PWS program, policies, procedures and field structure.

It is expected that at least 2,000 hours, or at least one half of the total contract effort, will be to provide **direct on-site** technical assistance for at least 210 public water systems for each year of the contract. It is expected that the technical

assistance will be delivered continuously over each contract year. This assistance will be provided upon request of the NYSDOH project manager, or their designees. This assistance will deal with on-going regulatory, operational, management, financial, and technical deficiencies; including emergencies. The contractor will provide all staff and equipment necessary to provide these services.

A recommended procedure to use when working with a water system follows.

- Contact PWS via telephone, fax, or E-mail.
- Discuss problems/violations.
- If applicable, set up an appointment to inspect the water system facilities and conduct an on-site technical assistance (TA) visit.
- Notify local health department or NYSDOH office of TA visit.
- Document each PWS on-site TA visit both in writing and in the State accepted database, including all problems and deficiencies observed/reported.
- Work with PWS representative(s) on methods of correcting or improving situations.
- If a public health hazard exists, help PWS implement immediate corrective action and contact the local health department or NYSDOH as appropriate.
- Follow-up in writing with the PWS as needed for unresolved issues, including any recommendations. (NYSDOH TA Coordinator and local health representative are to be copied on all correspondence between the Contractor and PWS.)
- To ensure implementation of recommendations when appropriate, the Contractor will follow up with the PWS and determine what progress has been made.
- Individual PWS visits and progress for visits with unresolved issues will be documented and reported every two weeks to the NYSDOH TA Coordinator.

The Task C deliverables will be at least 210 PWS on-site TA visits per contract year, as demonstrated by resolution of the issue that generated the request for assistance and/or stabilization of the immediate situation and arrangement for follow up activities. Acceptable documentation of activities completed for each PWS on-site TA visit will facilitate this determination by the NYSDOH project manager. Documentation of these activities is covered under the Task F deliverables.

Payment will be made each billing period for on-site technical assistance visits successfully completed within the billing period. Payment for the billing period will be made upon receipt and approval of a standard voucher for work satisfactorily completed during the previous 2 month period.

Task D: Provide Training to PWS

The Contractor will provide training sessions for PWS personnel on technical issues listed in the summary of services and as directed by the NYSDOH. Contractor will be responsible for developing training material, providing outreach to PWS, providing training locations statewide, securing operator continuing education credits from the NYSDOH operator certification program or equivalent, and delivering the training to NYSDOH satisfaction.

Each training event should result in 35 or more operators receiving continuing education credits, and should be conducted with an instructor to attendee ratio of at least 1 instructor to 20 attendees to facilitate an orderly environment. Additional details for approval of courses for operator certification in New York State are available upon request.

The trainings must be located in locations across the state, to provide regional coverage in a manner to maximize the attendance by operators located throughout the state. Preferably, these locations will vary each contract year to minimize travel cost and time for operators in some regions in any given contract year.

Regions for this contract will be defined as:

- North Country (Franklin, Clinton Essex, Warren, and Hamilton counties)
- Watertown (St Lawrence, Jefferson, Herkimer, Oneida, Oswego and Lewis counties),
- Capitol Region (Washington, Rensselaer, Columbia, Greene, Albany, Saratoga, Schenectady, Schoharie, Fulton, and Montgomery counties),
- Metropolitan (Dutchess, Ulster, Sullivan, Orange, Putnam, Rockland, Westchester, Nassau, and Suffolk counties),
- Central (Otsego, Delaware, Madison, Chenango, Broome, Tioga, Tompkins, Cortland, Onondaga, Cayuga, Seneca, Schuyler, and Chemung counties), and
- Western (Niagara, Erie, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Orleans, Monroe, Livingston, Yates, Ontario, Wayne and Steuben counties).

No training will be delivered in the New York City area (those counties not previously listed) under this contract.

The price proposal submission bid form requires all bidders to clearly identify the training event costs by region, based on the regional costs the vendor expects to submit for reimbursement. All unit costs are required as the actual number of deliverables and regional locations for each contract year may vary based on actual Department needs and those of the water supply community (target community). The unit quantities in the bid documents are solely for the evaluation of the bids and represent maximum quantities the Department will consider for reimbursement. These unit quantities are not a guarantee of deliverables the successful bidder may receive compensation for.

The NYSDOH project manager, and a limited number of local health department staff, may audit courses from time to time to ensure complete and adequate coverage of course material. Training sessions should result in a full day of continuing education credits for attendees, 6 hours or more.

The Task D deliverable will be the setup and successful delivery as described above for at least 6 full day training sessions per contract year.

Payment will be made each billing period for training sessions satisfactorily completed within the billing period. Payment for the billing period will be made upon receipt and approval of a standard voucher for work satisfactorily completed during the previous 2 month period.

Task E: Develop Technical Products for Individual PWS

The Contractor will work with individual water systems on the development of technical manuals and other products to help the PWS better operate and manage their infrastructure and overall operations. Such products may include, but are not limited to: written standard operating procedures (SOPs), emergency response plans (ERPs), water system infrastructure mapping, and asset management plans (AMPs). It is expected that these products will be developed for small water systems that are experiencing problems due to the lack of such items and that lack the resources or expertise to develop them on their own.

Other types of comparable deliverables are possible within this category, based on emergency events or related program or PWS needs, however they will not be part of the bidding of this RFP and would be subject to acceptance by both the successful bidder and the NYSDOH contract manager.

The Task E deliverable will be the completion of at least 10 products per contract year that are acceptable to the PWS and approved by the NYSDOH contract manager or local health department office. At least two of these ten annual deliverables are expected to be completed water system infrastructure mappings.

Payment will be made each billing period for technical products satisfactorily completed. Payment for the billing period will be made upon receipt and approval of a standard voucher for work satisfactorily completed during the previous 2 month period.

Task F: Attend Progress Meetings and Complete Progress Reports

The Contractor will maintain detailed records and photographs of each service visit and will submit reports of progress to the NYSDOH TA Coordinator every two weeks beginning in the month following the first date the TA providers began providing direct services and technical assistance. The Contractor will attend meetings with NYSDOH to review progress of the contract, anticipated to be held on a quarterly basis. The Task F deliverable will be the completion of timely and acceptable progress reports every two weeks for the duration of the contract.

Reports will consist of three portions:

- The first part will consist of a short write up (1-2 paragraphs) on each visit made, and will include information on the name of the water system, the name of the TA provider, the PWS Federal Number ID #, the municipality and county in which the system is located, the PWS Federal ID # of the source water provider in the case of a consecutive/purchasing system, the name(s) and title(s) of the person(s) visited at the PWS, the name and contact info for the local health unit, the reason for the visit, the findings and action taken, and the outcome.
- The second part will be a statistical report on the total number of calls received and serviced by the contractor, the total staff time in the field and a summary of the outcomes by nature.
- The third part of the report will identify and report any common problems with

water systems/operators identified during that month that may require additional attention or program adjustments. Potential solutions such as training or education in specific areas of concern, operational changes, etc., should be recommended.

Payment will be made each billing period for meetings attended and progress reports satisfactorily completed. Payment for the billing period will be made upon receipt and approval of a standard voucher for work satisfactorily completed during the previous 2 month period.

D. PROPOSAL REQUIREMENTS

1. Technical Proposal

A complete Technical Proposal consists of the following:

- Transmittal Letter
- Project Narrative
- Equipment Proposal Submission Form (Attachment 4)
- Lobbying Form (Attachment 5)

Do not include any cost information in the technical proposal.

Transmittal Letter

A transmittal letter should be included in the technical proposal and include:

- a. bidder's legal business name;
- b. bidder's address;
- c. bidder's NYS Vendor ID number;
- d. name and contact information for individual to contact for issues related to the proposal;
- e. name, contact information and signature of the officer authorized to bind the bidder into a contract with New York State;
- e. statement that the bidder accepts the contract terms and conditions contained in this RFP including any exhibits and attachments
- f. statement that the bidder has received and acknowledged all Department amendments to the RFP, as may be amended
- g. statement that the bidder is prepared, if requested by the Department, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department
- h. statement that the bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department; and
- i. statement that the bidder certifies the proposal will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals.
- j. Statement that the bidder either:
 - includes a disclosure of any potential conflicts of interest, including but not limited to, all business, financial, or beneficial relationships

or interests in any a affiliation or contractual relationships. In cases where such a relationship(s) and/or interest(s) exists, (ii) the bidder must describe how an actual or potential conflict of interest and/or disclosure of confidential information relating to an award under this contract will be avoided, and (iii) the bidder guarantees knowledge and full compliance with the New York State Public Officers' Law, as amended, including but not limited to Sections 73 and 74, with regard to ethical standards applicable to State employees; OR

- o states there is no conflict(s) of interest

Project Narrative

Project Narratives should be submitted in the format outlined below, and be submitted on 8 ½ x 11 inch paper, double-sided and double-spaced.

a. Statement of the Problem

State in succinct terms your understanding of the types of water system problems you expect to encounter based on your experience, this RFP, and the information that has been made available for review.

b. Technical Approach

Describe in narrative form the bidders detailed plan for providing the services identified in Section C.2 of this RFP. A description of the TA provider services should address the general scope of services and the manner in which they would be provided. Identify the number of staff and the titles of the individuals that will be providing technical assistance. Identify the number and types of field equipment that will be dedicated to supporting the proposal (see Equipment Proposal Submission Form, Attachment 4 of this RFP).

Modifications to the task descriptions are not permitted.

c. Experience

Describe the organization's experience in assisting small communities in general and technical competence in servicing requests for assistance at small community and/or non-community water systems in particular. The organization must have a minimum of 5 years' experience with troubleshooting, training, or self-help projects in small rural communities; preferably in New York State.

Provide at least 4 references to verify experience. Reference information should include the name, address, and phone number of the client contact person. The references should reflect work of a similar types and/or magnitude, as required by this RFP.

Studies or projects referred to should be identified and the name of the client provided, including the name, address and phone number of the

responsible official.

d. Personnel and TA Provider's Experience

Identify the project officer, TA providers, and professional personnel that will be responsible for completion and oversight of the work. The proposed TA providers must have experience in assisting small communities in general and technical competence in servicing requests for assistance at small community and/or non-community water systems in particular. Previous experience in providing project assistance in small rural communities would be of particular relevance.

A minimum of two TA providers shall be available to deliver timely on-site technical assistance. Due to the large geographic area of the State, the TA providers shall be located in separate regions to provide timely response throughout the State. The TA providers must hold NYSDOH water operator certification at a grade level commensurate with the classification of systems served. It is anticipated that the contractor will need staff certified at NYSDOH grade levels IIA, IIB, C and D.

Previous experience by the proposed project officer assigned to this contract should include appropriate project management and oversight.

Resumes should be submitted for each proposed TA provider and all project team members.

Equipment Proposal Submission Form:

Using Attachment 4, identify All Key Equipment and/or Non-personnel resources Vendor Will Provide to Complete the Individual Task Items. Conceptual Items are noted for illustrative purposes only. Bidder may add columns/pages to Attachment 4 as needed.

Lobbying Form:

See Section E.11 and complete Attachment 5

2. Price Proposal

A complete Price Proposal consists of the following:

- Completed Price Proposal Form (Attachment 3)
- Vendor Responsibility Attestation (See Section E.9 and Attachment 6)
- M/WBE Procurement Forms (See Section E.16 and Attachment 7)

The Price Proposal Form must provide proposed prices for each of the deliverables set out in Section C.3, Tasks and Deliverables. The total level of effort to implement the contract is expected to be equivalent to about 4,000 hours of staff time per contract year.

The level of effort to implement Task C: "Provide Direct Technical

Services" must comprise at least one half of the total level of effort to implement the contract.

The price proposal must include a total cost figure for the length of the contract and the total cost subsequently broken down to show the annual cost for each of the five contract years. Bidders must not include any assumptions or contingencies in their price proposal. All anticipated travel related to this RFP will be within New York State only.

The Price Proposal Form requires all bidders to clearly identify the annual unit costs they expect to submit for reimbursement. All unit costs are required as the actual number of deliverables for each contract year may vary based on actual Department needs and those of the water supply community (target community).

The unit quantities in the bid documents are solely for the evaluation of the bids and represent maximum quantities the Department will consider for reimbursement. These unit quantities are not a guarantee of deliverables the successful bidder may receive compensation for.

The price proposal must be **sealed separately** from the remainder of the proposal. The Price Proposal must be submitted using the Price Proposal Form included as Attachment 3 of this RFP.

3. Bidder's Financial Capacity and Stability

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

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

4. Method of Award

a. Vendor Selection

At the discretion of the Department of Health, all bids may be rejected. The evaluation of the bids will include, but not be limited to the following considerations:

i. Technical Proposal 70%

The technical proposal will constitute 70% of the final proposal score. Each technical proposal will be evaluated using rating sheets and/or other evaluation forms developed by the NYSDOH prior to the opening of the bids. Evaluation of the technical proposal will include:

- 1). Capability of bidder to evaluate and perform the required services.
- 2) Capability of bidder to fulfill their detailed technical approach with the personnel and equipment identified in their proposal.
- 2). The bidder's experience in, and equipment identified in the equipment proposal for, conducting technical service visits and/or technical training sessions.
- 3). Sufficient support capability of bidder to provide backup assistance.
- 4). Experience of bidder's TA providers assigned to the project.
- 5). Quality and comprehensiveness of the proposal.
- 6). Knowledge and experience with 10NYCRR Part 5, Subpart 5-1 (Public Water Systems), the federal SDWA including the 1986 and 1996 Amendments to the SDWA, Recommended Standards of Water Works, and the operation of a public water supply.
- 7). Knowledge and experience with New York State local health departments and regulated water suppliers.

The NYSDOH reserves the right to request potential qualifying bidders to make an oral presentation of their proposal. The presentation would be designed to provide an opportunity for the bidder to clarify their proposal to the NYSDOH in order to ensure a thorough understanding of the material submitted. The NYSDOH will schedule the presentations. The presence of the Project Director who will be working on the project will be required at the presentation. No proposal amendments will be allowed in the oral presentation.

Technical proposals will be rated to a maximum score of 70. The technical proposal that best meets the requirements of this RFP will score 70 points.

ii. Price Proposal 30%

The price proposal constitutes 30% of the final proposal score. Price proposals will be rated to a maximum score of 30. The price evaluation will be made by at least two (2) NYSDOH employees who will receive, open, and assess each of the price proposals.

The lowest bid meeting minimum requirements will score 30 points. The remaining proposals will receive a proportion of the 30 points that matches the ratio of their cost to the lowest bid that meets the requirements.

5. Subcontracting

No contract work described in Section C. Detailed Specifications shall be subcontracted to alternate organization(s). All work described in Section C. Detailed Specifications shall only be completed by the successful bidder.

E. ADMINISTRATIVE

1. Issuing Agency

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

2. Inquiries

Any questions concerning this proposal must be directed, in writing, to the contact listed on page ii of the RFP by the date and time specified on the RFP cover page.

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

Notice of Pre-bid Conference

A pre-bid conference will be held at the date and time specified on the RFP cover page at the William K. Sanford Town Library, 629 Albany Shaker Road, Loudonville, NY 12211. Each prospective bidder will be limited to no more than three (3) representatives at the bidder's conference. Answers to questions will not be official until posted on the Department's website.

The purpose of the pre-bid conference will be to:

- Provide a brief overview of the New York State Technical Assistance/Small Systems Program
- Address inquiries related to this RFP that are raised at the pre-bid conference.

Registration for the pre-bid conference is strongly recommended. Registration guarantees you a seat at the conference and copies of relevant information that will be distributed at the pre-bid conference. Walk-ins will be turned away if the room size cannot accommodate all interested parties and copies of available information will be distributed on a priority basis to registered participants. A registration form is provided as Attachment 1 of this Request for Proposal. To register, potential bidders should submit the information indicated below:

- Name(s) of the individual(s) that will be attending the pre-bid conference;
- Name, address, and telephone number of the company for which the attending individual(s) represent; and
- Name, title and mailing address of the primary contact person for subsequent communications related to this Request for Proposal.

Registration information may be submitted via mail, fax or E-mail but must reach the NYSDOH by the date specified on the RFP cover page. Submit your registration form to:

John Helmeset, P.E.
New York State Department of Health
Bureau of Water Supply Protection
Corning Tower, Room 1119
Empire State Plaza
Albany, NY 12237
Fax: 518-402-7599
E-mail: jah20@health.state.ny.us

3. Submission of Proposals

The detailed technical proposal and associated costs submitted for consideration must not be combined. The technical proposal and price proposal must be submitted in separate sealed envelopes, as specified below.

Technical Proposal:

Two originals and six copies in hardcopy format and one (1) electronic copy in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only, of the technical proposal should be provided and must be in a sealed envelope or package that is separate from the price proposal.

The envelope or package should be clearly labeled, "Technical Assistance to Small Community and Non-Community Water Systems – Technical Proposal". The bidder's organization name should also be clearly indicated on each of the envelopes containing the technical proposal. It is the bidder's responsibility to ensure that each page of the technical proposal is clearly labeled with the bidder's name, in the event that separation of pages should occur.

Price Proposal:

Two originals and six copies in hardcopy format and one (1) electronic copy in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions only, of the price proposal should be provided and must be in a sealed envelope or package that is separate from the technical proposal.

The envelope or package should be clearly labeled, "Technical Assistance to Small Community and Non-Community Water Systems – Price Proposal". The bidder's organization name should also be clearly indicated on each of the envelopes containing the price proposal. It is the bidder's responsibility to ensure that each page of the price proposal is clearly labeled with the bidder's name, in the event that separation of pages should occur.

Responses to this solicitation should be clearly marked "Technical Assistance to Small Community and Non-Community Water Systems Proposal RFP

#1209120256 – Do Not Open Until Bid Opening”, and directed to Leslie Armstrong or Pam Muellecker at:

New York State Department of Health
Bureau of Water Supply Protection
Corning Tower, Room 1110
Empire State Plaza
Albany, NY 12237

It is the bidders' responsibility to see that proposals are delivered to Room 1110 prior to the date and time of the bid due date. Late proposals due to delay by the carrier or not received in the Department's mail room in time for transmission to room 1110 will not be considered.

- The Price Proposal Form must be filled out in its entirety and signed by the responsible corporate officer.
- The responsible corporate officer for contract negotiation must be listed. This document must be signed by the responsible corporate officer.
- All evidence and documentation requested under Section D, Proposal Requirements should be provided at the time the proposal is submitted.
- Where discrepancies between the hardcopy and CD version of the proposals occur, the hardcopy version shall supersede.
- Original proposals should be marked as such. Where signatures are required, the original proposals should be signed in ink. Electronic signatures are not acceptable.

4. 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 365 days from the bid opening; and,
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

5. Payment

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

New York State Department of Health
Bureau of Water Supply Protection
Corning Tower, Room 1119
Empire State Plaza
Albany, NY 12237
Attention: John Helmeset

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

Email at epunit@osc.state.ny.us or by telephone at 518-486-1255. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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

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

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

Invoices may be submitted every two months, from the date of contract award. Invoices should specify costs for services completed for each Task as outlined in this RFP, for which work was completed by the contractor and for which payment is being requested within the previous two month period. Failure to submit reports every two months, or adequately demonstrate appropriate progress towards completion of work as described herein, in the sole opinion of the NYSDOH, shall be considered sufficient basis for withholding payment.

6. Term of Contract

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

The contract will be for a five year period. The anticipated dates of contract are August 1, 2013 – July 31, 2018. The selected contractor shall commence services upon notification by the NYSDOH of contract execution.

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.

7. Debriefing

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

8. Protest Procedures

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

9. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders should also complete and submit the Vendor Responsibility Attestation (Attachment 6).

10. State Consultant Services Reporting

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

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

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

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

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

11. Lobbying Statute

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

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

Generally speaking, two related aspects of procurements were amended:

(i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

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

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

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

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

13 Information Security Breach and Notification Act

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or

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

14 New York State Tax Law Section 5-a

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

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

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. Unless the information upon which the ST-220-TD is based changes, this form

only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

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

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

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

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

15 Piggybacking

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

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

NEW YORK STATE LAW

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

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

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>. For guidance on how New York State Department of Health will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

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

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

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

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.

B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting a written remedy in response to the notice of deficiency to:

John Helmeset, P.E.
Bureau of Water Supply Protection
New York State Department of Health
Corning Tower, Room 1119
Empire State Plaza
Albany, NY 12237
Phone 518-402-7650
Fax 518-402-7599

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, excluding Attachment 8 "Sample Standard NYS Contract Language and Appendices" will, itself, be

included as an appendix of the contract.

- APPENDIX A - Standard Clauses for All New York State Contracts
- APPENDIX B - Request for Proposal
- APPENDIX C - Proposal
The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- APPENDIX D - General Specifications
- APPENDIX E
Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:
 - Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
 - **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **C-105.2** – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
 - **SI-12** – Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance.
 - Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
 - **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **DB-120.1** – Certificate of Disability Benefits Insurance
 - **DB-155** – Certificate of Disability Benefits Self-Insurance
- Appendix G - Notices

- Appendix H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)
- Appendix M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
- Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

G. ATTACHMENTS

1. Bidder's Conference Registration Form
2. No-Bid Form
3. Price Proposal Form
4. Equipment Proposal Submission Form
5. Lobbying Form
6. Vendor Responsibility Attestation
7. M/WBE Procurement Forms
8. Sample Standard NYS Contract Language with Appendices

Attachment 1

Bidder's Conference Registration Form

New York State Department of Health
A Request for Proposal to Provide Technical Assistance to Small Community and Non-Community
Water Systems

Bidder's Conference
Registration Form

Use this form to register for the bidder's conference. The bidder's conference will be held on November 15, 2012 at 10:00 AM at the William K. Sanford Town Library, 629 Albany Shaker Road, Loudonville, NY 12211.

Registration for the bidder's conference is strongly recommended. Registration guarantees you a seat at the conference and copies of the relevant information, as described below, which will be distributed at the bidder's conference. Walk-ins will be turned away if the room size cannot accommodate all interested bidders and copies of available information will be distributed on a priority basis to registered participants. Each prospective bidder will be limited to no more than three (3) representatives at the pre-bid conference.

Please complete the following information:

Name(s) of the individual(s) that will be attending the bidders' conference:

1. _____
2. _____
3. _____

Name, address, fax and telephone number of the company the attending individual(s) represent:

Company Name: _____

Mailing Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

Name and title of the primary contact person for subsequent communications related to this RFP:

Name: _____

Title: _____

This registration form may be submitted via mail or fax but must reach the Department of Health by November 9, 2012.

Submit your registration form to:

John Helmeset, P.E.

Bureau of Water Supply Protection

New York State Department of Health

Corning Tower, Room 1119

Empire State Plaza

Albany, NY 12237

Fax: 518-402-7599

Attachment 2

No-Bid Form

**NEW YORK STATE
DEPARTMENT OF HEALTH**

NO-BID FORM

PROCUREMENT TITLE: Technical Assistance to Small Public Water Systems
RFP #1209120256

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)
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(Officer Title)	(Telephone)
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(e-mail Address)

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

Attachment 3

Price Proposal Form

**PRICE PROPOSAL FORM
SUMMARY PAGE**

This Price Proposal Form must be used by bidders submitting a price proposal in response to the New York State Department of Health's Request for Proposals to Provide Technical Assistance to Small Community and Non-Community Water Systems statewide.

A complete Price Proposal consists of this "Summary Page" and five "Annual Details" Pages. Proposals that do not include pricing for all categories on the six sheets will be disqualified.

Organization Name:

Preparer Name:

<u>Tasks</u>	<u>PROPOSED PRICE</u>
Task A: <u>Develop TA Implementation Work Plan</u> (to be paid upon completion and approval)	\$ _____
Task B: <u>Notification To Local Health Departments</u> (to be paid upon completion and approval)	\$ _____
Task C: <u>Provide Direct Technical Services</u> (to be paid based on the # of systems satisfactorily visited)	\$ _____
Task D: <u>Provide Training to PWS</u> (to be paid based on the # of training sessions satisfactorily completed)	\$ _____
Task E: <u>Develop Technical Products for Individual PWS</u> (to be paid based on type and # of products satisfactorily completed)	\$ _____
Task F: <u>Attend Progress Meetings and Complete Progress Reports</u> <u>Every Two Weeks</u> (to be paid based upon satisfactory completion)	\$ _____
TOTAL PROPOSAL PRICE \$ _____	

Signature _____ Date _____

PRICE PROPOSAL FORM

ANNUAL COST DETAILS- PLEASE IDENTIFY ALL COSTS VENDOR WILL SUBMIT FOR REIMBURSEMENT FOR INDIVIDUAL TASK ITEMS. DO NOT LEAVE ANY BOXES EMPTY. ALL UNIT COSTS ARE REQUIRED AS ACTUAL UNITS REQUIRED IN EACH CONTRACT YEAR MAY VARY DUE TO ACTUAL DEPARTMENT AND WATER SUPPLY COMMUNITY NEEDS

<u>Task</u>		<u>Proposed Price</u>					
		<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Total Price for Task Deliverables</u>
<u>Task A:</u>	Develop TA Implementation Work Plan and Annual Updates						
<u>Task B:</u>	Notification To Local Health Departments						
<u>Task C:</u>	Provide Direct Technical Assistance to Public Water Systems	1 st Circuit Rider (\$_____ per visit) x 105 on-site TA visits.					
	(Provide costs for 210 on site TA visits per contract year)	2 nd Circuit Rider (\$_____per visit) x 105 on-site TA visits.					

<u>Task</u>		<u>Proposed Price</u>						<u>Total Price for Task Deliverables</u>
		<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>		
<u>Task D:</u>	Provide Training to Public Water Systems	North Country Training Session (\$____per session).						
		Capital Region Training Session (\$____per session)						
		Metropolitan Region Training Session (\$____per session).						
		Central Region Training Session (\$____per session).						
		Western Region Training Session (\$____per session).						
		Watertown Region Training Session (\$____per session).						

<u>Task</u>		<u>Proposed Price</u>						<u>Total Price for Task Deliverables</u>
			<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	
<u>Task E:</u>	Develop Technical Products for Individual Public Water Systems (Provide costs for <u>two</u> of each type to result in the 10 Total Task E anticipated deliverables per contract year)	1 st Type Technical Product – Mapping (\$____per product) x 2 products each contract year.						
		2 nd Type Technical Product – SOP (\$____per product) x 2 products each contract year.						

Task		Proposed Price						Total Price for Task Deliverables
		<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>		
<u>Task E:</u>	Develop Technical Products for Individual Public Water Systems (Provide costs for <u>two</u> of each type to result in the 10 Total Task E anticipated deliverables per contract year)	3 rd Type Technical Product – ERP (\$____per product) x 2 products each contract year.						
		4 th Type Technical Product – AMP (\$____per product) x 2 products each contract year.						

<u>Task</u>		Proposed Price						<u>Total Price for Task Deliverables</u>
			<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	
<u>Task E:</u>	Develop Technical Products for Individual Public Water Systems (Provide costs for <u>two</u> of each type to result in the 10 Total Task E anticipated deliverables per contract year)	5 th Type Technical Product – Emergency Operations (\$_____per product) x 2 products each contract year.						
<u>Task E:</u>	Complete Progress Reports Every Two Weeks and Attend Progress Meetings							
								Total Column Entries Below
<u>BID PRICE</u>								

Attachment 4

Equipment Proposal Submission Form

EQUIPMENT PROPOSAL SUBMISSION FORM

**PLEASE IDENTIFY ALL KEY EQUIPMENT AND/OR NON-PERSONNEL RESOURCES VENDOR WILL PROVIDE TO COMPLETE THE INDIVIDUAL TASK ITEMS.
 CONCEPTUAL ITEMS ARE NOTED FOR ILLUSTRATIVE PURPOSES ONLY.
 ADDITIONAL COLUMNS/PAGES MAY BE APPENDED BY THE BIDDER**

<u>Task</u>		Itemized Equipment Pieces					
		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>Other Programs that will use this equipment</u>
<u>Task A:</u>	Develop TA Implementation Work Plan and Annual Updates	Software	Other				
<u>Task B:</u>	Notification To Local Health Departments	Software	Website	Other			

<u>Task C:</u>	Provide Direct Technical Assistance to Public Water Systems	For 1 st Circuit Rider	Line Locator	Leak Detector and Software	Tools/Gauges/Meters	Communications	Vehicles/Other	
		2 nd Circuit Rider	Line Locator	Leak Detector and Software	Tools/Gauges/Meters	Communications	Vehicles/Other	

<u>Task D:</u>	Provide Training to Public Water Systems	Software/ Laptop	Projector/ Speakers	Training Facility	Training Aids	Other	
<u>Task E:</u>	Develop Technical Products for Individual PWS	Software/ Laptop/ Printer	Templates/ Reference Materials	Other			

<u>Task</u> <u>E:</u>	Attend Progress Meetings and Complete Progress Reports	Software/ Laptop	Templates/ Reference Materials	Other			
--------------------------	--	---------------------	--------------------------------------	-------	--	--	--

Attachment 5

Lobbying Form

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

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

No Yes

2b. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

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

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

Attachment 6

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 7

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:

To Be Submitted with Proposal:

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

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

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

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

To Be Submitted by Winning Bidder Only:

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

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: Technical Assistance to Small Public Water Systems	RFP/Contract No. 1209120256

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: Technical Assistance to Small Public Water Systems	RFP/Contract No. #1209120256

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: Technical Assistance to Small Public Water Systems	Contract No.

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

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

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

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

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

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

Submitted by : _____ Title: _____

 Signature

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

Check applicable categories: Project Staff Consultants
 Subcontractors

Contractor
Name _____

Address

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

(Name and Title)

(Signature)

Date

**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 8

SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES

MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address): .

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE:12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:

TO:

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

FUNDING AMOUNT FOR CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

MUNICIPALITY NO. (if applicable):

STATUS:

CONTRACTOR IS () IS NOT () A SECTARIAN ENTITY

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

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

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

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

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

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:

.

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

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

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

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

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

III. Term of Contract

- A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.

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

IV. Proof of Coverage

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

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

V. Indemnification

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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
 30 South Pearl St -- 7th Floor
 Albany, New York 12245
 Telephone: 518-292-5220
 Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

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

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

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

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

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

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

Agency Code 12000

APPENDIX X

Contract Number: _____ Contractor: _____

Amendment Number X-_____

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

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

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

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

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

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

\$ _____ From ____/____/____ to ____/____/____.
(Value before amendment) (Initial start date) (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 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:
- 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;
 - 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;
 - 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 G

NOTICES

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

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

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

State of New York Department of Health

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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

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

APPENDIX M

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

I. General Provisions

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

II. Contract Goals

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

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

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

- C. Where MWBE goals have been established herein, pursuant to 5 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.