RFP # 15510

New York State Department of Health
Empire State Stem Cell Board

A Request for Proposals for
Scientific Oversight of Stem Cell Consortia

Schedule of Key Events

RFP Release Date	April 4, 2014
Written Questions Due	April 30, 2014
Letter of Interest Due (optional)	April 30, 2014
Response to Written Questions (On or about)	May 7, 2014
Proposal Due Date	June 2, 2014 by 3:00 pm ET
Anticipated Contract Start Date	January 1, 2015

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
New York State Department of Health
Empire State Plaza, Corning Tower Room 2756
Albany, NY 12237
Phone: 518-474-7896
Email: 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 contact for communications related to the following subjects:

Submission of Written Proposals or Bids:

Lakia Rucker
New York State Department of Health
Wadsworth Center
Empire State Plaza, Room C345
P.O. Box 509, Albany, NY 12201-0509
Phone: 518-474-7002
Email: nystemgrants@wadsworth.org

Debriefings and Negotiation of Contract Terms after Award:
Submission of Written Questions:

Bonnie Jo Brautigam
New York State Department of Health
Wadsworth Center
Empire State Plaza, Room C345
P.O. Box 509, Albany, NY 12201-0509
Phone: 518-474-7002
Email: nystemgrants@wadsworth.org

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

The purpose of this RFP entitled "Scientific Oversight of Stem Cell Consortia" is to secure services of a qualified and responsible entity for the purpose of conducting ongoing independent scientific review and oversight of Consortia to Accelerate Therapeutic Applications of Stem Cells funded by the New York State Stem Cell Science Program (NYSTEM), the stem cell science research program of the New York State Department of Health (NYSDOH or Department).

B. BACKGROUND

Advances in stem cell research are encouraging leading scientists to investigate the potential of cells to treat disease. If researchers can develop safe, reliable methods for prevention and treatment of disease, millions of Americans living with devastating diseases such as diabetes or amyotrophic lateral sclerosis, or injuries such as severe spinal cord injury, could benefit.

The Empire State Stem Cell Board (ESSCB) is authorized to provide funding for basic, applied, translational and other research designed to advance scientific discoveries in fields related to stem cell biology. In conjunction with NYSTEM, the ESSCB solicits, reviews and makes funding recommendations for creative and innovative biomedical research projects to be supported by the Empire State Stem Cell Trust Fund. Information about the ESSCB and NYSTEM can be found at http://stemcell.ny.gov.

The consortia to be overseen will be selected pursuant to the second round of Request for Applications (RFAs) soliciting applications for Consortia to Accelerate Therapeutic Applications of Stem Cells. The RFA was issued on November 15, 2013 to accelerate development of **new clinical applications** of stem cells for prevention and/or treatment of disease (a copy of the RFA can be found at: http://www.health.ny.gov/funding/rfa/1212030210). Awards have not yet been made, although two consortia are anticipated.

NYSDOH seeks proposals in response to this RFP from qualified organizations to develop and coordinate ongoing independent scientific review and oversight for each stem cell research consortium funded as a result of the above-mentioned RFA.

C. DETAILED SPECIFICATIONS

1. Staffing and Project Coordination

The selected contractor will ensure that the quality and availability of its staff assigned to fulfill the NYSDOH contract will be maintained over the term of the contract. Any change to the Project Coordinator position (see below) must have the prior approval of NYSDOH.[1] Other changes in staff assignments are at the discretion of the organization, provided that personnel replacements have substantially comparable or better qualifications and experience than original personnel and sufficient time to devote to the work. Any subcontractors must be approved by NYSDOH; however, the contractor is responsible for ensuring that all deliverables are completed to the satisfaction of NYSDOH.

a. Organizational Staffing Capacity

The bidder should have access to a sufficient number of staff who have experience in biomedical or health-related research and have demonstrated scientific excellence through their own research publications. These staff will possess appropriate scientific credentials; a record of academic publications within the pertinent disciplines; specific research experience; and prior experience in scientific review procedures and preclinical/clinical sciences administration.

The bidder should also have access to a sufficient number of staff who have expertise in all administrative aspects of ongoing scientific review and oversight to fulfill the tasks of the project including: information technology; data management; Oversight Panel member recruitment, assessment and evaluation; Oversight Panel member liaising; conflict of interest identification and management; travel and meeting coordination; scientific writing and editing; contract management; and fiscal operations.

b. Project Coordinator

The bidder will identify and designate a single experienced staff member as overall Project Coordinator for this contract who will dedicate as much time on this contract as needed to ensure its successful completion. This individual will have the responsibility, rank and authority to make decisions on behalf of the organization and to act as liaison with NYSDOH to ensure completion of all tasks required for this project. The Project Coordinator should have a doctoral degree in the biomedical sciences, and a minimum of three (3) years of professional experience overseeing all aspects of independent scientific review. Because a significant aspect of this position will be managing senior scientists, the Project

[1] NYSTEM program staff will interface directly with the contractor.

Coordinator must have strong management skills and the proven ability to oversee individuals who have attained significant recognition in their respective fields.

2. Scope of Work

Under the contract resulting from this RFP, the contractor will be responsible for the deliverables as stated in this section:

a. Recruit, Engage and Maintain Oversight Panel Membership

The contractor will establish and maintain an independent Oversight Panel for each of the funded consortia. It is expected that each Oversight Panel will be comprised of no less than five and no more than eight members at any one time, including the chairperson.

The contractor will be responsible for engaging Oversight Panel members as consultants, implementing procedures regarding conflicts of interest and confidentiality, assessing members' effectiveness, and maintaining membership appropriate to the progression of each consortium's scientific projects. Each Oversight Panel will have a range of expertise appropriate to the specific scientific goals of the consortium throughout the contract term. Thus, the composition of the Oversight Panels may change to address the needs of each consortium as it progresses or, at the discretion of NYSDOH, to assure satisfactory performance of Oversight Panel members. Selection, retention, evaluation and maintenance of satisfactory Oversight Panel membership will be an ongoing responsibility of the contractor. A membership turnover rate of one member per year is anticipated.

The contractor will work with NYSDOH to identify and recruit appropriate Oversight Panel members and chairs. NYSDOH will provide the contractor with a list of potential Oversight Panel members submitted by the awarded consortia as part of their applications for funding, as well as NYSDOH's own recommendations. This list may be updated periodically and will serve as only one source. It is expected that the contractor will recruit appropriate experts from among the world-wide scientific community to ensure composition of each Oversight Panel is appropriate throughout each consortium's contract term (anticipated to be July 1, 2015 through June 30, 2019). In the course of recruitment, the contractor will fully instruct all members on their expected role and duties, emphasizing that Oversight Panel members are expected to provide frank and specific reviews and advice to the Consortium and to NYSDOH. **NYSDOH will have final approval on the selection and retention of Oversight Panel members and chairpersons for each consortium. NYSDOH retains the right to reject Oversight Panel members.**

b. Consortia Liaison Activities

The contractor will act as liaison to the Oversight Panels, NYSDOH and the consortia. This will include: coordination of periodic communications and meeting planning activities; distribution of agendas and pre-meeting scientific briefing books including the most recent consortium progress report and other materials requested by the Oversight Panel; and reporting of Oversight Panel recommendations.

Two weeks before a consortium Kick-off meeting (see below), the contractor will arrange a teleconference of the Oversight Panel, contractor and NYSDOH staff to reinforce NYSDOH expectations and to provide a preview of the consortium and the role of the Oversight Panel. During this teleconference, Oversight Panel members will be encouraged to raise any initial concerns with respect to the consortium workplan, budget and timeline.

The Oversight Panels will be responsible for advising NYSDOH regarding: removal or addition of aims, investigators, staff, consultants and subcontractors; revision or addition of milestones; other changes to the workplan; budgetary adjustments; and, whether to proceed at key decision points, including the identification of specific activities and next steps. As such, the Oversight Panel will be provided confidential access to the peer review critique and all data and materials supported by the award, including but not limited to scientific progress reports and unpublished data.

The contractor will work closely with NYSDOH, the consortia and the Oversight Panels to ensure that each consortium's project development is proceeding according to schedule. This will include review of periodic progress reports and updates submitted by the consortium. In addition to recommendations based upon these reviews, the contractor and Oversight Panel will determine and recommend to NYSDOH the need for additional meetings of the Oversight Panel, changes in milestones, addition or deletion of aims, or other interim action necessary to ensure project completion.

An NYSDOH staff member will be designated as the primary contact for the contractor. NYSDOH staff will communicate final approval of all plans and acceptance of deliverables under the contract and will work closely with the contractor, consortia and Oversight Panels throughout the contract term.

c. Planning and Coordination of Oversight Meetings

i. General Information

The contractor will facilitate periodic communications with NYSDOH, the Oversight Panel members and the relevant consortium leadership necessary to plan the details of each Oversight Panel meeting. The primary purpose of such meetings will be to evaluate scientific progress and contribution of specific consortium members (see section d. Consortia Evaluation, below) toward milestones. In general, Oversight Panel meetings will include presentation of consortia project data including progress toward project milestones, critical scientific assessment, updates to the consortia contract workplans, discussion of related budget issues and recommendations for action. Possible outcomes of these meetings include: project continuation, redirection or discontinuation, staffing and budgetary adjustments. Continued funding and "Go/No-go" determinations will be made by NYSDOH following receipt and review of consortium progress reports and the recommendations and reports of the Oversight Panel.

Each Oversight Panel will meet in-person with its consortium at least annually, and at other time periods, either in-person or electronically, as appropriate to the established consortium project milestones and key decision points, and to ensure continuous progress throughout the consortium's contract term. The Oversight Panel will determine the number of meetings per year according to the needs of each consortium. The table on page 6 outlines the number of meetings anticipated per consortium each year.

It is anticipated that in-person meetings will be held within the facilities of the consortium member institution most appropriate to the milestone(s) under review, and always within the continental United States. However, the contractor is responsible for selecting the venue for the meetings. The host consortium member institution for each meeting will assist the contractor in making the specific meeting arrangements. The contractor will ensure that the specific location provides adequate audio/visual capacity and equipment to support speaker presentations and Oversight Panel discussions. This includes, but is not limited to: quality sound systems and microphones; LCD projectors, pointers, laptops and projection screens; and, white boards and markers. The contractor will ensure the provision of appropriate and sufficient technical support staff to operate and troubleshoot audio/visual and communications equipment throughout each meeting. If the contractor chooses a meeting site other than a consortium member institution's site, the contractor will be responsible for obtaining a suitable meeting location at its own cost.

ESTIMATED NUMBER OF MEETINGS PER CONSORTIUM PER YEAR

Meeting Type	Year 1	Year 2	Year 3	Year 4	Year 5
Teleconference Pre-Kick-off Meeting without consortium	1				
In-person Kick-off Meeting with consortium	1				
In-person Annual Meeting with consortium	1	1	1	1	1
Videoconference or Webinar of Other Scientific Presentation with consortium	1	1	1	1	1
Teleconference Discussion or Follow-up without consortium	6	6	6	6	6
In-person Final Meeting with consortium					1
TOTAL	**10**	**8**	**8**	**8**	**9**

The contractor will be responsible for secure/confidential posting, printing and distribution of all materials related to each meeting, including but not limited to the agenda, scientific briefing book, and resulting reports and recommendations from the Oversight Panel.

The number and composition of persons present for each meeting type may vary based upon the project milestones and the purpose of the meeting, but is anticipated to include four (4) NYSDOH staff, essential contractor staff, five (5) to eight (8) Oversight Panel members, and the consortium Principal Investigator (PI), Co-PI(s), ad Project Manager. Meetings with consortium members may also include collaborating investigators. Because these meetings will necessarily entail discussion of confidential scientific or personnel-related information, attendance at all or portions of these meetings will be restricted to essential participants, as determined by NYSTEM for each meeting. The deliberations of the Oversight Panel should be likewise conducted in private. When appropriate to facilitate sound recommendations and communications, deliberations will include participation of the PI, Co-PI(s), Project Manager and/or NYSDOH staff.

ii. Specifics for In-Person Meetings

Each chosen geographic location will have reasonable travel access and accommodations for attendees. The meeting venue will be handicap-accessible and provide enough general seating to comfortably accommodate the projected number of attendees. The venue will provide a separate meeting room with conference tables to accommodate the Oversight Panel with contractor and NYSDOH staff. The venue will also be able to accommodate meals and refreshments as appropriate to the length of the meeting agenda.

The contractor will arrange and pay for the travel and lodging for all Oversight Panelists and necessary contractor staff to attend the meeting. Per diem rates that mirror those of New York State employees will apply (see http://www.osc.state.ny.us/agencies/travel/travel.htm). The contractor will also arrange for the lodging of NYSDOH staff as part of the accommodations made for the Oversight Panelists and staff. However, the contractor will not be responsible for payment of travel and lodging for NYSDOH staff.

Consortium members will be responsible for their own travel and lodging costs and arrangements.

During the meeting, the contractor will be responsible for meals and refreshments for all individuals whose attendance is required by NYSDOH. The contractor will adjust per diem rates (see link above) for its staff and Oversight Panel members as appropriate to the meeting meal schedule.

a) Kick-off Meeting

During the first six months of each consortia award period, the contractor will arrange for a “Kick-off Meeting” for each consortium and Oversight Panel to meet in-person with the respective PI and any Co-PIs, the Project Manager, investigators and NYSDOH staff. The Oversight Panel will evaluate and provide recommendations regarding the current status of the project based upon the consortium contract workplan, a written scientific update covering the time period from application to the Kick-off meeting, and scientific presentations from consortium members during the meeting. The group will establish: a schedule of due dates for receipt of consortium progress reports and updates based upon major project milestones and key decision points; a tentative schedule and locations for subsequent meetings; general guidelines for materials to be provided by the consortium in advance of each meeting; and specific materials to be provided in advance of the next scheduled meeting and whether specific site visits will be required. This meeting is anticipated to be two (2) days in length.

b) Progress/Milestone/Annual Meetings

During each consortium contract year, each Oversight Panel will meet in-person with members of the consortium to review progress toward milestones and key decision points. The timing of these meetings for each consortium will be established as appropriate to project milestones and progress report submission requirements (see "Kick-off Meeting" above). These meetings are anticipated to be one and one half (1.5) days in length. Additional electronic (see section C.2.c.iii., below) or in-person meetings will be scheduled to assess interim progress toward milestones.

c) Final Meeting

Approximately three months prior to the end of the consortia oversight contract term, each Oversight Panel will meet in-person with members of the consortium to review progress toward milestones and make final recommendations to NYSDOH. This meeting is anticipated to be two (2) days in length.

iii. Electronic Meetings

As described in Section C.2.c.i., above, it is anticipated that each Oversight Panel will meet with or without members of the consortium to review progress toward milestones, reports on scientific progress, consortium responses to Oversight Panel requests, or to clarify/verify additional details following a prior meeting. Meetings that include scientific presentations by members of the consortium will be conducted via webinar or videoconference, as appropriate to the technical capacities of the consortium institution or host site and the topic(s) to be discussed or data to be shown. These meetings are anticipated to be approximately three (3) hours in length. Meetings that do not include scientific presentations will be conducted via teleconference and are expected to be approximately one (1) hour in length.

d. Consortia Evaluation

The review criteria used to evaluate the scientific merit of the consortia applications (see Section VI.D. of the Consortia RFA found at: http://www.health.ny.gov/funding/rfa/1212030210) will form the general basis of the Oversight Panel evaluation. In addition, the Oversight Panel will consider:

Performance: The consortium has achieved the milestones approved by the Oversight Panel and NYSDOH staff and has presented quantifiable study

outcomes. The consortium has achieved the milestones within budget and in appropriate time frames.

Responsiveness: The consortium leadership has implemented the recommendations of the Oversight Panel, as approved by NYSDOH, in a timely manner. The project remains responsive to the overall goals of the proposed project.

Impact: The data presented indicate that the therapeutic or technology/platform continues to offer an advantage over other alternatives in practice or in the development pipeline. Results achieved to date demonstrate satisfactory progress toward clinical significance.

Feasibility and Next Steps: Feasible strategies and steps to ensure successful achievement of the future milestones are outlined in the updated Workplan.

If the consortium is unable to achieve its milestones within budget and in appropriate time frames or is unresponsive to recommendations as required by NYSDOH, the Oversight Panel may recommend to NYSDOH that the contract be terminated; the final decision regarding contract termination will be made by NYSDOH.

e. Records of Proceedings and Reports

The contractor will be responsible for the delivery of high-quality meeting summaries, evaluation results, recommendations and reports of the Oversight Panels to NYSDOH.

The contractor will develop a template for use during each meeting to assist the Oversight Panel in reviewing and documenting progress toward the Consortium's milestones, and in making recommendations regarding "Go/No-go" decisions, next steps and Consortium composition.

The contractor will assist the Oversight Panel chairperson to develop and produce a formal record of proceedings for each meeting to be distributed to the consortium PI, Co-PIs and Project Manager, Oversight Panel members and NYSDOH staff. Within five (5) business days after each meeting, the contractor will provide a draft report including recommended action steps and due dates. The final report will be delivered within two weeks of the close of each meeting in a Portable Document File (PDF) format and include the following:

- meeting agenda based on consortium contract milestones
- roster of attendees

- scientific abstracts for each presentation
- summary of discussions
- Oversight Panel recommendations to NYSDOH.

Such reports will be considered confidential, although report contents will be shared with the consortium and used by NYSDOH to provide direction to the consortium regarding future contract requirements or modifications.

D. PROPOSAL REQUIREMENTS

Partial bids for portions of the Detailed Specifications (Section C) will be deemed non-responsive and will not be considered.

1. Technical Component

The technical component of the proposal should include six parts as outlined in Sections a-f below:

a. Bidder Experience

Eligible bidders **must** have five (5) years of experience in conducting all aspects of ongoing independent scientific review and oversight with at least three (3) separate health-related research sponsors, which must include at a minimum, the following:

- oversight panel member recruitment and composition
- meeting planning and facilitation
- coordination of travel, lodging and other logistics
- evaluation of scientific progress of multi-disciplinary projects
- group facilitation, and
- report writing.

To substantiate that experience, the bidder should provide a listing of relevant clients from the past five (5) years, including references and contact information from a minimum of three (3) separate health-related research sponsors. The sponsors may be any combination of federal, state or not-for-profit national organizations.

For each reference, provide the name of the sponsoring agency/organization, a contact name and professional title, address and telephone number. Also provide a brief description of the scope of the services provided, dates of service, timelines, reports produced and other relevant information.

Provide a brief description of the organization's background and demonstrate relevant experience in coordinating ongoing independent scientific review and oversight of funded research as described in Section C.2., Scope of Work. Provide a brief summary of the background, qualifications and staffing for the overall organization.

b. Qualifications of Staff and Project Coordinator

Provide adequate information to demonstrate the availability of a sufficient number of knowledgeable and skilled staff with expertise in each required area to implement successfully the proposed project activities described in Section C.1., Staffing and Project Management, Section C.2., Scope of Work, and as detailed in the Approach section of the bidder's proposal (Technical Component).

Identify the Project Coordinator and staff that will provide each of the specific services required under the contract. Include the name, relevant qualifications, accomplishments, and number of years of experience for each individual.

c. Approach

Provide a detailed plan to fulfill the Scope of Work (Section C.2.). Describe the specific approaches, tasks, activities and related operations to be employed in each year of the contract for the oversight of approximately two consortia.

Provide the rationale for the proposed approach, explaining efficiencies gained and other relevant issues. Acknowledge potential problem areas that could be encountered using this approach and identify steps that will be taken to address them if they arise.

Provide evidence of the organization's previous experience and ability to accomplish the Scope of Work (Section C.2.) using this approach.

d. Facilities, Technology and Infrastructure

Describe the facilities, technology and equipment available to fulfill the Scope of Work (Section C.2.) and as detailed in the Approach section of the bidder's proposal (see above). Include a description of available information technology, equipment and resources used to communicate with and transmit confidential data between Oversight Panel members and NYSDOH throughout the contract term.

Also describe the facilities and technology resources available to support all other aspects of the contract, such as tracking expenditures, submitting timely vouchers, reimbursing reviewers and managing costs associated with the contract.

e. Timeline

Provide a timeline representative of specific activities, tasks and related operations to support the identification, solicitation and coordination of scientific experts; all aspects of scientific meeting/videoconference/ teleconference planning, coordination, management, recording and reporting; ongoing independent scientific review and oversight processes, including evaluation of progress toward specific milestones and scientific, fiscal and administrative recommendations regarding such progress; evaluation of Oversight Panel members; and other necessary tasks.

f. Appendices

Information submitted in appendices should specifically support elements of the Technical component of the proposal. Appendix material may include curriculum vitae and/or résumés of staff that will be assigned to this project. Elaborate brochures, reproduced copies, or printouts of standard manuals or sales literature may not be substituted for the required proposal narratives and responses, but may be included in appendix material as a sample to further exemplify the narrative and response (i.e., responses such as “see appendix” are not sufficient). Appendix material will be considered in the evaluation of the Technical component.

2. Cost Component

a. Cost Component Form

The Cost Component Form (Attachment 3) must correspond to the Technical Component and must include the **full costs** associated with fulfilling the services offered in the Technical Component for the duration of the contract term, including but not limited to recording necessary data, preparing and producing written products, and managing costs associated with convening of the Oversight Panels.

Bid prices quoted in Attachment 3 must include all costs such as staff salaries, staff travel, communications, meeting meals and refreshments, and ancillary costs such as printing, secretarial services, data entry, computer support, communications, recordkeeping and reporting, and inflationary calculations for salaries and benefits. The ONLY costs associated with completion of the

responsibilities as described in this RFP that should NOT be included in the bid pricing are for the Oversight Panel Member's travel, lodging and honoraria. These will paid as pass-through costs according to the rates set forth below:

Guidelines for Pass-through Costs:

a) Oversight Panel Member Travel and Lodging

The contractor will arrange and pay for the travel and lodging for all Oversight Panelists to attend meetings. Only actual, necessary and reasonable business expenses will be reimbursed. Per diem rates that mirror those of New York State employees will apply (see http://www.osc.state.ny.us/agencies/travel/travel.htm).

b) Oversight Panel Member Honoraria:
To compensate them for their extraordinary expertise, both in related scientific endeavors and in providing oversight and advice regarding long-term projects, extraordinary commitment of time to the full responsibilities as Oversight Panelists, and for compliance to the highest standards of confidentiality and conflict of interest, each Oversight Panel member will receive honoraria as follows:

- $1,500 per in-person meeting day **and**
- $750 per travel day to in-person meeting **or**
- $400 per teleconference, videoconference or webinar meeting hour to a maximum of $1,500 per meeting.

As referenced above, each Oversight Panel will include one member who will be designated chairperson. The chairperson will serve as the primary contact for each Oversight Panel and its work, including meeting planning and report preparation. As such, chairpersons will be provided **additional** compensation for their work as follows:

- $2,000 per in-person meeting **or**
- $600 per videoconference, webinar or teleconference meeting.

No additional compensation will be made for the participation of the chairperson in planning and coordination of the Oversight Panel meetings.

Chair Compensation Example for a 2 day in-person meeting with two full travel days:

Full Travel Day	$750
In-Person Meeting Day	$1,500
In-Person Meeting Day	$1,500
Full Travel Day	$750
Additional Payment for Chairing Meeting	$2,000
Total	$6,500

To complete the Cost Component Form (Attachment 3), bidders are required to propose separate costs for each ongoing administrative fee and meeting cost listed in Column B using the range/number of participants specified in Column C and the estimated number of meetings/teleconferences/ videoconferences specified in Column D. **Do not include pass-through costs on this form.** Bid price should represent the **per consortium** costs in each of the five years of the proposed contract as follows:

1. Yearly Administrative Fee – bid price should be for one year's administrative service

2. Kick-off Meeting Costs – bid price should be total cost for one meeting in year one

3. Annual Meeting Costs – bid price should be total cost for one meeting in each year

4. Teleconference Meeting Costs - bid price should be total cost for one meeting in each year (it is anticipated that there will be six Teleconference Meetings per year)

5. Videoconference Meeting Costs - bid price should be total cost for one meeting in each year

6. Final Meeting Costs - bid price should be total cost for one meeting in year five

See sections C.2 and E.5. of the RFP for additional details.

The State of New York will not be held liable for or reimburse any cost incurred by the bidder for work performed in the preparation and production of a proposal.

b. Lobbying Form

Attachment 1 should be completed and signed by an authorized official.

3. Method of Award

a. Pass/Fail Assessment

All proposals will be reviewed by NYSDOH to ensure that minimum criteria are met. Proposals that do not meet the following minimum criteria will not be forwarded for evaluation and rating:

- Proposal package must be received at the address stated in Section E.3, Submission of Proposals, by the date and time specified on the cover page of the RFP
- Required Bidder's Experience (See Section 1.a. Bidder's Experience)
- Cost Component must include a completed Cost Component Form (Attachment 3).

b. Evaluation Process

NYSDOH will conduct a comprehensive, fair and impartial evaluation of each proposal in response to this RFP according to New York State laws and regulations and Department rules.

The basis of the award will be the highest composite Technical Evaluation and Cost Evaluation score (see below). The evaluation of proposals will determine which proposal provides the "Best Value" to the State. Under NYS Procurement Guidelines, "Best Value" is the basis for awarding all service contracts, which optimizes quality, cost and efficiency among responsive and responsible offers. Separate teams of staff will evaluate the Technical and Cost Components.

References provided by highest scoring (technical/cost) bidder will be contacted. In the event that the references disqualify the bidder (minimum qualifications are not met), NYSDOH may pursue a contract for the services proposed by the next highest scoring bidder.

NYSDOH will notify all bidders in writing after it makes its final selection and the Department has approved the selection. The Department will then develop a binding contract with the selected bidder to provide the services. In the case where there is a failure to execute a contract with the selected bidder, NYSDOH may pursue a contract for the services proposed by the next highest scoring bidder.

NYSDOH staff will administer any contract that is executed between the contractor and the State.

The Technical Component (70% weight) will be scored based on the six (6) sections of the Technical Component proposal:

a. Bidder's Experience
b. Qualifications of Staff and Project Coordinator
c. Approach
d. Facilities, Technology and Infrastructure
e. Timeline
f. Appendices

The Cost Component (30% weight) will be scored based on the costs provided by the bidder in the Attachment 3, Cost Component Form.

c. Vendor Selection in the Event of a Tied Score

At the discretion of the Department, all bids may be rejected. In the event of a tie among final bidder scores, the determining factor(s) for award, in descending order of importance, will be:

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

E. ADMINISTRATIVE REQUIREMENTS

1. Issuing Agency

This RFP is a solicitation issued by the NYSDOH. The NYSDOH is responsible for the requirements specified herein and for the evaluation of all proposals received in response to this solicitation.

2. Inquiries

Prospective bidders may submit questions relating to the RFP in writing by email to the designated contact listed on page 1 of the RFP. To the degree possible, each inquiry should cite the RFP section and paragraph to which it refers. Questions must be received by the Department on or before 3:00pm Eastern Time on the date specified in the schedule of key events on the cover page of the RFP.

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

This RFP is posted on the Department of Health's website at http://www.health.ny.gov/funding. Questions and answers, as well as any RFP modifications, will be posted on the Department of Health's website at http://www.health.ny.gov/funding on or about the date specified on the cover page of this RFP.

3. Submission of Proposals

A proposal consists of two (2) distinct parts: (1) a Technical Component and (2) a Cost Component. Both parts must be submitted in response to this RFP. No financial, bid or pricing information may be included in the Technical Component.

Interested vendors should submit:

	Electronic Submission	Original	Copies
Technical Component	One (1) CD or DVD with a copy of the Technical Component in Adobe PDF	2 Hard Copies	4 Hard Copies
Cost Component	One (1) CD or DVD with a copy of the Technical Component in Adobe PDF	2 Hard Copies	4 Hard Copies

The Technical Component and Cost Component should be in separate sealed packages that are clearly marked "NYSDOH Consortia Oversight Technical Component" or "NYSDOH Consortia Cost Component." Both sealed packages should be packaged together in one package for mailing, clearly marked "NYSDOH Consortia Oversight," and directed to:

<u>Regular Mail (U.S. Postal Service)</u>
NYS Department of Health
Wadsworth Center, Room C345
Extramural Grants Administration
Empire State Plaza
PO Box 509
Albany, NY 12201-0509
Attention: Lakia Rucker

<u>Express/Courier Mail Services</u>
NYS Department of Health
Wadsworth Center, Room C345
Extramural Grants Administration
Empire State Plaza
Dock J, P-1 Level
Albany, NY 12237
Attention: Lakia Rucker

It is the bidders' responsibility to see that a complete bid package is delivered to Room C345 prior to the bid due date and time. Late bids due to delay by the

carrier or not received in the Wadsworth Center's mailroom by the deadline will not be considered.

All evidence and documentation requested under Section D., Proposal Requirements must be provided at the time the proposal is submitted.

The bidder must take every precaution to eliminate discrepancies between hardcopies and electronic copies of the proposal. In the event of any discrepancies between the original hardcopies of the Technical Proposal and Cost Proposal and the copies supplied on CDs/DVDs, the hard copy (paper copy) will prevail.

4. The Department of Health Reserves the Right to

a. Reject any or all proposals received in response to the RFP;

b. Withdraw the RFP at any time, at the agency's sole discretion;

c. Make an award under the RFP in whole or in part;

d. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;

e. Seek clarifications and revisions of proposals;

f. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;

g. Prior to the ***bid opening***, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;

h. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;

i. Change any of the scheduled dates;

j. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;

k. Waive any requirements that are not material;

l. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;

m. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;

n. Utilize any and all ideas submitted in the proposals received;

o. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,

p. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

5. Payment

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

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: DOHaccountspayable@ogs.ny.gov with a subject field as follows:
   Subject: **<<Unit ID: 3450297>> <<Contract #>>**

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

   NYS Department of Health
   Unit ID 3450297
   PO Box 2093
   Albany, NY 12220-0093

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

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

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9 must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at 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 St ate (NYS Department of Health) shall be made in accordance with Article XI-A of the New Yor k State Finance Law. Payment terms will be:

Invoices for the yearly administrative fee will be paid on a quarterly basis for 25% of the total shown on the Cost Component Form (RFP Attachment 3).

Invoices for meeting activities and associated pass-through costs will be accepted upon submission and acceptance/approval of all required reports for each meeting (see C.2.e. and D.2.a. above).

Invoices will not be authorized for payment until NYSDOH receives and approves each report and the deliverables associated with the corresponding invoice. Invoices will be submitted in accordance with the terms of the contract, using the forms and formats required by NYSDOH.

6. Term of Contract

This agreement shall be effective upon approval of the NYS Office of the State Comptroller for a contract period of five (5) years, projected to commence on the date specified in the Schedule of Key Events.

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 ciohelpdesk@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. The winning bidder must also complete and submit the Vendor Responsibility Attestation (Attachment 4).

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. See http://www.osc.state.ny.us/agencies/forms/ac3271s.doc

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. See http://www.osc.state.ny.us/agencies/forms/ac3272s.doc

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 lobbyists obligations under the Lobbying Act from $2,000 to $5,000; and

k. establishes the Advisory Council on Procurement Lobbying.

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

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

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

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

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, "Accessibility Web-based Information and Applications", and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and internet information and applications are accessible to persons with disabilities. Web content must conform to New York

State Enterprise IT Standard NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by Department of Health, contractor or other, and the results of such testing must be satisfactory to the Department of Health before web content will be considered a qualified deliverable under the contract or procurement.

13. Information Security Breach and Notification Act

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

14. New York State Tax Law Section 5-a

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

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

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD (see http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. 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 (see http://www.tax/ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), 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.

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 0% for MWBE participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 0% 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 subcontract ors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: http://www.esd.ny.gov/mwbe.html.

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

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

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the

Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

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

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

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

   New York State Department of Health
   Extramural Grants Administration
   Wadsworth Center, PO Box 509, Room C345
   Albany, NY 12201-0509

   a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

d. New York State Department of Health may disqualify a Bidder as being non-responsive under the following circumstances:
   a) If a Bidder fails to submit a MWBE Utilization Plan;
   b) If a Bidder fails to submit a written remedy to a notice of deficiency;
   c) If a Bidder fails to submit a request for waiver; or
   d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

   Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of

the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

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

Equal Employment Opportunity Requirements

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

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

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

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

17. Freedom of Information Law (FOIL)

Information submitted to the Department is subject to the Freedom of Information Law (FOIL) (New York State Public Officers' Law, Article 6, Sections 84 to 90). To the extent permitted by law, a proposal will not be disclosed, except for purposes of evaluation, prior to approval by the Office of the State Comptroller of the resulting contract. All material submitted becomes the property of the Department and may be returned at the Department's discretion. Submitted proposals may be reviewed and evaluated by any person, other than one associated with a competing bidder, designated by the Department. Any information supplied by a bidder, which is believed to be exempt from disclosure under FOIL, will be clearly marked and identified as such upon submission by the bidder. Marking the information as “confidential” or “proprietary” on its face or in the document header or footer shall not be sufficient without specific explanation of the basis for the claim of exemption from disclosure. Acceptance of the claimed materials by the Department does not constitute a determination on the exemption request. A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL in accordance with statutory procedure.

18. Encouraging Use of New York Businesses in Contract Performance

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidders should complete Attachment 9 to indicate their intent to use/not use New York Businesses in the performance of this contract.

F. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal will, itself, be referenced as an appendix of the contract. Examples of the Appendices listed below can be found within Attachment 8 (Boilerplate Contract) of this RFP.

- 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. Lobbying Form
2. No Bid Form
3. Cost Component Form
4. Vendor Responsibility Attestation
5. M/WBE Procurement Forms
6. Minimum Confidentiality and Conflict of Interest Requirements
7. Report Templates
8. Boilerplate Contract with Appendices
    - *Appendix A*
    - *Appendix B*
    - *Appendix C*
    - *Appendix D*
    - *Appendix E*
    - *Appendix G*
    - *Appendix H*
    - *Appendix M*
    - *Appendix X*
9. Encouraging Use of New York Businesses in Contract Performance

NEW YORK STATE
DEPARTMENT OF HEALTH

Lobbying Form

PROCUREMENT TITLE: Scientific Oversight of Stem Cell Consortia RFP # 15510

Bidder Name:
Bidder Address:

Bidder Vendor ID No:
Bidder Fed ID No:

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

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

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

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

   No Yes

   If yes, please answer the next questions:

   1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
   No Yes

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

   No Yes

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

Governmental Entity:_____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

_____
_____
_____
_____
_____
_____

(Add additional pages as necessary)

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

No Yes

2b. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

_____
_____
_____
_____
_____
_____

(Add additional pages as necessary)

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)

NEW YORK STATE
DEPARTMENT OF HEALTH

NO-BID FORM

PROCUREMENT TITLE: Scientific Oversight of Stem Cell Consortia RFP # 15510

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

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

_____

_____

_____

_____

- ☐ Please retain our firm on your mailing list.

_____
(Firm Name)

_____ _____
(Officer Signature) (Date)

_____ _____
(Officer Title) (Telephone)

_____
(e-mail Address)

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

Attachment 3: Cost Proposal Form RFP# 15510

COST FOR OVERSIGHT OF ONE CONSORTIUM OVER 5 YEARS - FIXED BID PRICING

Bidder's Organization Name: _____

A	B	C	D	E	F	G	H	I
	SERVICE:	**# of panel members**		**Year One Cost**	**Year Two Cost**	**Year Three Cost**	**Year Four Cost**	**Year Five Cost**
1. YEARLY ADMINISTRATIVE FEE:								
a	Recruit and Maintain Panel Membership;	5 - 8	N/A					
b	Consortia Liaison Activities							

A	B	C	D	E	F	G	H	I
	MEETINGS:	**max # of attendees per mtg**	**est # of mtgs per year per consortium**	**Year One Cost (per meeting)**	**Year Two Cost (per meeting)**	**Year Three Cost (per meeting)**	**Year Four Cost (per meeting)**	**Year Five Cost (per meeting)**
2. IN-PERSON KICK-OFF MEETING COSTS WITH CONSORTIUM MEMBERS:								
c	Planning and Coordination of Oversight Meetings;	40	1 (YEAR 1 ONLY)		N/A	N/A	N/A	N/A
d	Consortia Evaluation;							
e	Records of Proceedings and Reports							
3. IN-PERSON ANNUAL MEETING COSTS WITH CONSORTIUM MEMBERS:								
c	Planning and Coordination of Oversight Meetings;	25	1 EACH YEAR					
d	Consortia Evaluation;							
e	Records of Proceedings and Reports							
4. TELECONFERENCE MEETING COSTS (INCLUDES PRE-KICK-OFF MTG WITHOUT CONSORTIUM MEMBERS and FOLLOW-UP MTGS WITHOUT CONSORTIUM MEMBERS):								
c	Planning and Coordination of Oversight Meetings;	15	6 EACH YEAR					
d	Consortia Evaluation;							
e	Records of Proceedings and Reports							
5. VIDEOCONFERENCE MEETING COSTS (FOR WEBINAR OR SCIENTIFIC PRESENTATION WITH CONSORTIUM MEMBERS):								
c	Planning and Coordination of Oversight Meetings;	15	1 EACH YEAR					
d	Consortia Evaluation;							
e	Records of Proceedings and Reports							
6. IN-PERSON FINAL MEETING COSTS WITH CONSORTIUM MEMBERS:								
c	Planning and Coordination of Oversight Meetings;	40	1 (YEAR ONLY)	N/A	N/A	N/A	N/A	
d	Consortia Evaluation;							
e	Records of Proceedings and Reports							

The cost proposal form must be filled out completely with amounts in each of the 22 areas above.
Refer to Section C.2., Scope of Work (pages 3-10) and Section D.2., Cost Component (pages 12-14) for program expectations.
Present the TOTAL cost for each of the five activities (a-e) as outlined in Section C.2., Scope of Work of the RFP found on pages 3-10.
Costs for activities 'a' and 'b' (Membership and Liaison) should be provided for each of the five years based on the range of panelists indicated.
Costs for activities 'c', 'd' and 'e' (Planning & Coordination of Oversight Meetings, Consortia Evaluation, and Record of Proceedings & Reports) should be provided based on attendance (Column C).

The Bid Prices entered above shall include ALL costs with the exception of the following pass-through costs :

(a) Panelist honoraria as stipulated on page 13 of the RFP; and

(b) Panelist travel and per diem as stipulated on page 7 of the RFP.

Vendor Responsibility Attestation

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

Choose one:

☐ An on-line Vender Responsibility Questionnaire has been updated or created at OSC's website: https://portal.osc.state.ny.us within the last six months.

☐ A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.

☐ A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: _____

Print/type Name:_____

Title:_____

Organization:_____

Date Signed:_____

New York State Department of Health
M/WBE Procurement Forms

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

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

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

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

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

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

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

- M/WBE Form #1 -

New York State Department of Health

BIDDER/CONTRACTOR M/WBE UTILIZATION PLAN

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

Description of Plan to Meet M/WBE Goals

PROJECTED M/WBE USAGE

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

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

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

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

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

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

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

Attachment 5 – MWBE Procurement Forms

- M/WBE Form #2 -

New York State Department of Health

M/WBE UTILIZATION WAIVER REQUEST

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

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

_____
_____
_____
_____
_____

Include attachments below to evidence good faith efforts:

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

Section 4: Signature and Contact Information

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

Submitted by: _____ Title:_____

_____
Signature

- M/WBE Form #3 -

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

Contractor Name:	
Contract Title:	**Contract No.**

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

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

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

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

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

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

Submitted by: _____ Title:_____

_____
Signature

- 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

- M/WBE Form #5 -

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 w ill cause its contractors and subcontractors to take good faith actions to achieve the M/W BE 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 W BEs, including solicitations to M/WBE contractor associations.
(2) Request a list of State-cert ified M/WBEs from AGENCY and solicit bids from them directly.
(3) Ensure that plans, specif ications, 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 re cords of bid solicitation, including those to M/W BEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/W BE contract participation goals.
(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue fi nancial 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 w ill 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 empl oyment opportunities w ithout 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 st ate in all solicitation or advertisements for employ ees 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 cont racting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the bas is of race, creed, color, national origin, sex, age, di sability or marital status and that such union or representative w ill 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 Stat e and F ederal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discrim inate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic char acteristic, marital status or domestic violence victim stat us, and shall also follow the requirements of the Human Ri ghts Law with regard to non-discrimination on the basis of pr ior criminal conviction and prior arrest.

(e) This organization w ill include t he provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requi rements of the subdivisions w ill be binding upon each subcontractor as to w ork in connection w ith the State contract.

_____
Name Title

_____
Signature & Date

Attachment 5 – MWBE Procurement Forms

- M/WBE Form #6 -

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 6
Minimum Confidentiality and Conflict of Interest Requirements

Basic Tenets of Ongoing Independent Scientific Review and Oversight

Ongoing independent scientific review and oversight is predicated on a system of trust. Confidentiality and freedom from conflict of interest are of paramount importance. The New York State Department of Health (NYSDOH) expects that all interactions with the contractor will be treated confidentially. NYSDOH also expects that the contractor demand a very high standard of its staff, consultants and Oversight Panel members with regard to confidentiality, conflicts of interest and bias.

Researchers submit their intellectual property to be reviewed by Oversight Panel members with the understanding that procedures are in place to ensure that the process is free of bias and that their ideas are protected. NYSDOH will not tolerate the disclosure of proprietary information by panel members, the contractor or its consultants. Nor will it tolerate participation in the oversight process by those with conflict of interest or bias, as defined below.

The contractor must put policies, procedures and safeguards in place when selecting and training Oversight Panel members. Oversight Panel members contribute to the scientific and public health communities by critically evaluating ongoing projects. Oversight Panel members are drawn from academia, industry, government, non-profit, and public interest groups. The technical skills and perspectives of this diverse group of individuals are essential to producing accurate and objective assessments of ongoing consortium projects.

Identification of possible conflicts of interest and protection of confidential information are essential to the credibility of this process and those who participate in it. If the review and oversight process is compromised by allegations of lack of objectivity, conflict of interest, bias, or misconduct, the outcomes of the process are invalidated. Such an occurrence wastes taxpayer money and is harmful to the NYSDOH, the contractor, individual Oversight Panel members and consortium members. As such, NYSDOH will review and approve related policies, procedures and safeguards prior to implementation by the contractor.

Confidentiality

All information and materials distributed and discussed must be safeguarded with diligence and integrity. Proprietary and confidential information may not be discussed in public or used by those who are privvy to it at any time. Oversight Panel discussions and conclusions may not be disclosed except as instructed by NYSTEM. Dissemination of recommendations regarding consortia performance and the justification behind them are in the sole purview of NYSDOH.

Each Oversight Panel member is expected to sign and certify a comprehensive confidentiality agreement that, at a minimum, expresses commitment and agreement to abide by these basic principles.

Conflict of Interest and Bias

"Conflict or interest" is generally defined to mean any financial or other interest that could 1) impair the individual's objectivity, or 2) create an unfair competitive advantage for any person or organization. "Bias" refers to views or positions held by an individual that can be traced to close identification or association with a particular group. The contractor must establish guidelines to address commonly occurring situations, including but not limited to: economic

impact; proprietary information; access to government information; public statements and positions; reviewing one's own work; employment by the NYSDOH and others; and Oversight Panel member conduct.

Potential Oversight Panel members will be asked to consider questions of conflict of interest and bias before agreeing to participate on a panel. A full list of participating investigators and institutions will be provided by the contractor so that individuals can recuse themselves where there may be a conflict of interest. Even in cases where there is an appearance of a conflict or impropriety, the contractor will err on the side of caution and eliminate the person in question from participation on the panel.

Oversight Panel members are expected to complete and sign a conflict of interest and bias disclosure form that addresses each of the guidelines established by the contractor. Oversight Panel members must agree to keep the contractor apprised of any changes in information relevant to potential bias or conflict of interest while participating on an Oversight Panel. The contractor will take appropriate action with regard to all disclosures. The contractor will proactively evaluate whether any conflict of interest might be present at various times throughout the oversight process, including but not limited to: initial contact by the contractor; formal engagement of services; orientation; prior to the review of consortium materials; and at annual in-person meetings of the Oversight Panel.

Consortium Name

Independent Oversight Panel Report

Project Title:
Principal Investigator:
Organization:

CONSORTIUM PROJECT ABSTRACT

INTRODUCTION AND CHARGE TO THE PANEL (modified for each meeting)

EXECUTIVE SUMMARY AND RECOMMENDATIONS

PANEL FINDINGS AND ACTION ITEMS

GUIDANCE FOR FUTURE REVIEWS

- **Milestones and Timelines**
- **Progress Report Deadlines**
- **Tentative Meeting Schedule and Location**
- **Request for Additional Materials**

PANEL ROSTER
LIST OF MEETING ATTENDEES
MEETING AGENDA

MISCELLANEOUS / CONSULTANT SERVICES

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

NYS COMPTROLLER'S NUMBER: C#

ORIGINATING AGENCY GLBU: DOH01
DEPARTMENT ID: 345XXXX

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:
TO:

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

FUNDING AMOUNT FOR CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

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

NYS VENDOR IDENTIFICATION NUMBER:

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

MUNICIPALITY NO. (if applicable)

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

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

BID OPENING DATE:

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

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

Contract No.: C#

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

_____	_____
CONTRACTOR	STATE AGENCY
_____	_____
By:_____	By:_____
_____	_____
Printed Name	Printed Name
Title:_____	Title: _____
Date:_____	Date:_____
	State Agency Certification: "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."
_____	_____

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

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

_____
(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE	STATE COMPTROLLER'S SIGNATURE
_____	_____
Title:_____	Title:_____
Date:_____	Date:_____

GLBU: DOH01
APPENDIX X

Contract Number:_____ Contractor:_____

Amendment Number X-_____ BSC Unit ID: _345<XXXX>_____

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.

Additionally, Contractor certifies that it is not included on the prohibited entities list published at http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

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

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

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

$_____ From ___/_____/___ to ____/____/____.

This will result in new contract terms of:

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

Signature Page for:

Contract Number:_____ Contractor:_____

Amendment Number: X-_____ BSC Unit ID: _345<XXXX>_____

_ _ _ _

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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. <u>CONFLICTING TERMS</u>. 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. <u>GOVERNING LAW</u>. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. <u>LATE PAYMENT</u>. 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. <u>NO ARBITRATION</u>. 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. <u>SERVICE OF PROCESS</u>. 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. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

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.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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 to one of the following addresses:

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: DOHaccountspayable@ogs.ny.gov with a subject field as follows:

Subject: **<<Unit ID: 345XXXX>> <<Contract #>>**
(Note: **do not** send a paper copy in addition to your emailed voucher.)

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

NYS Department of Health
Unit ID 345<<xxxx>>
PO Box 2093
Albany, NY 12220-0093

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

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

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

III. Term of Contract

A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.

B. This Agreement may be terminated by mutual written agreement of the contracting parties.

C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.

D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.

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

IV. Proof of Coverage

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

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

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

2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR

3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

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

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

2. DB-120.1 – Certificate of Disability Benefits Insurance OR

3. DB-155 – Certificate of Disability Benefits Self-Insurance

V. Indemnification

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

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

APPENDIX D
GENERAL SPECIFICATIONS

A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that all specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specifications, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.

B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, e-mail, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.

C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department, and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable, and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any excess cost on account thereof.

D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.

E. The Department of Health will make no allowance or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.

F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.

G. The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.

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

I. <u>Non-Collusive Bidding</u> By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

   a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

   b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;

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

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

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

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

J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.

K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.

L. Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed for use in the application software provided to the Department as a part of this contract.

M. Technology Purchases Notification --The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"

1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.

2. If this RFP results in procurement of software over $20,000, or of other technology over $50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD

SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.

3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.

N. Date/Time Warranty

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

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

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

2. Date/Time Warranty Statement

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

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

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

O. <u>No Subcontracting</u> 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 or 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 exclude from participation in this transaction by any Federal department agency.

   b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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 following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; 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, 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.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

3. Termination (for Non-Responsibility) : Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

EE. Provisions Related to Iran Divestment Act As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract. During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

Appendix H

for CONTRACTOR that creates, receives, maintains or transmits individually identifiable health information on behalf of a New York State Department of Health HIPAA-Covered Program

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

II. Obligations and Activities of Business Associate:
   A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
   B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
   C. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
      1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
      2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
      3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
      4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
      5. Contact procedures for Covered Program to ask questions or learn additional information.
   D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
   E. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a

Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.

F. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.

G. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.

H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.

I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.

III. Permitted Uses and Disclosures by Business Associate

A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.

B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.

C. Business Associate may disclose Protected Health Information as Required By Law.

IV. Term and Termination

A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.

B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.

C. Effect of Termination.

1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all

Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

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

V. Violations

A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.

B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, <u>without limitation</u>; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

A. Regulatory References. A reference in this AGREEMENT to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.

B. Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this AGREEMENT from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.

C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix H of this AGREEMENT shall survive the termination of this AGREEMENT.

D. Interpretation. Any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.

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

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 0% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 0% 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 dam ages shall be c alculated as an am ount 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 m ade which requires the payment of liquidat ed damages and such identified s ums have not been withheld by t he New York St ate Department of Health, Contractor shall pay such liquidated dam ages to the Ne w York State Department of Health within sixty (60) days afte r they are assessed by the New York State Department of Healt h unless prior to the expiration of such sixtieth day, the Contractor has filed a compla int with the Director of the Division of Minority and Woman Business Development pursuant to Subdivis ion 8 of Section 313 of the Executive Law in which event the liquidated dam ages shall be pay able if Director renders a decision in favor of the New York State Department of Health.

Attachment _9_

ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE

I. Background

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing service and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/ proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

II. Required Identifying Information

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

____ ____
YES NO

If yes, identify New York State businesses that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.

New York Business Identifying Information

Business Name	Business Address	Contact Name	Contact Phone	Contact Email Address