

NEW YORK STATE DEPARTMENT OF HEALTH

A Request for Proposal for

Office of Public Health
Division of Family Health
Bureau of Early Intervention

RFP No: 16234

Early Intervention Program Monitoring and Quality Improvement Services

Schedule of Key Events

RFP Release Date	July 27, 2015
Written Questions Due	August 12, 2015
Response to Written Questions (on or about)	September 4, 2015
Proposal Due Date	4:00 pm ET, September 18, 2015
Anticipated Contract Start Date:	January 1, 2016

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:

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

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Submission of Questions:

Debriefings:

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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 Bureau of Early Intervention (BEI) is responsible for the administration, supervision, and oversight of the New York State's Early Intervention Program (NYS EIP). Part C of the Individuals with Disabilities Education Act (IDEA) and the New York State Public Health Law requires the Department of Health (Department) to provide general supervision and monitoring of the NYS EIP. One way that the Department meets this requirement is through a statewide quality improvement initiative that includes monitoring of providers of early intervention services and municipalities responsible for local implementation of the program. Since 2001 the Department has engaged a contractor to conduct quality assurance initiatives including the monitoring of NYS EIP providers and the municipalities that implement the program.

Monitoring is an integral part of improving the efficacy of activities and quality of services performed by the Bureau of Early Intervention. Monitoring helps not only to ensure that required services are being delivered and delivered appropriately, but that the quality of services is maximized. Further, monitoring enables improvement in the quality of services by identifying opportunities for improvement.

1. Purpose of this Request for Proposals

The purpose of this Request for Proposal (RFP) is to solicit proposals from organizations interested in bidding to monitor and conduct quality improvement activities for the New York State Department of Health's Early Intervention Program.

This RFP solicits proposals from interested bidders for oversight and monitoring activities. The Department intends to issue a contract to one interested bidder. The Department reserves the right to determine the number and combinations of monitoring reviews that are included in this RFP.

The following are required activities related to monitoring:

- Monitoring EI Agencies, Individuals and Municipalities for regulatory compliance
- Investigative Reviews
- Verification Reviews

Specific requirements for each type of review are detailed in Section C.3.a. of this RFP.

B. BACKGROUND

1. The Early Intervention Program

The Program for Infants and Toddlers with Disabilities was reauthorized under Part C of the federal Individuals with Disabilities Education Act (IDEA), effective July 1, 2005. A statewide Early Intervention Program (EIP) was established at the New York State Department of Health (Department) under Public Health Law (PHL - Title II-A, Article 25) in 1992 and has been fully operational since July 1, 1993.

The Early Intervention Program is New York State's implementation of Part C of the federal Individuals with Disabilities Education Act. The program provides a range of therapeutic and supportive services for eligible children with disabilities, ages birth to age three, and their families. The mission of the Early Intervention Program is "to identify and evaluate as early as possible those infants and toddlers whose healthy development is compromised and provide for appropriate intervention to improve child and family development."

Title II-A of Article 25 and regulations require that providers of early intervention services be monitored by their approving state early intervention service agencies. The Department currently has the responsibility for monitoring 58 local municipalities as local administrators of the Early Intervention Program and providers who are approved by the Department. There are 1641 agency and 21,789 individual providers who are approved to deliver early intervention services. These providers and municipalities are the entities that will be monitored under this contract.

The monitoring of municipalities and early intervention providers for regulatory compliance has been underway since June 2002 through a contract that is scheduled to end December 31, 2015. Many providers have been reviewed multiple times and all 58 municipalities have been reviewed at least twice as administrators of the program. The maturity of this monitoring program has resulted in monitoring protocols that have evolved over time to remain current with revised regulations and Department policies and procedures, and system generated monitoring reports that contain consistent language and customized statements of findings.

C. DETAILED SPECIFICATIONS

1. Minimum Eligibility Requirements for Bidding Organizations

Eligible organizations are not for profit, for profit or government entities which are legally authorized to perform the contracted services. Eligible organizations should have, at a minimum, three years of experience in quality improvement and utilization review and meet the following requirements:

- have one year of experience with the coordination and support of a statewide quality improvement program;
- have one year of experience with review of credentials of professional individuals and agencies;
- have one year experience in developing, modifying, and managing an electronic data system to capture, analyze and report on monitoring data;
- may not be directly or indirectly involved in the provision of early intervention in New York State and have no conflict of interest with respect to conducting the duties and responsibilities outlined in this RFP.

2. Preferred Experience for Bidding Organizations

Organizations which meet the minimum eligibility requirements and who have monitoring experience related to assessment and evaluation of programs delivering

developmental services to young children will be scored higher in the technical evaluation process.

3. Deliverables for Early Intervention Monitoring Reviews

For purposes of this RFP, the Department has established a target number of deliverables per deliverable category. This target is based on past monitoring experience, and the current demographics of the approved provider community.

The following section delineates the deliverables for the Early Intervention Program to be completed under this RFP. *The Department reserves the right to modify the schedule and mix of types of monitoring reviews throughout the contract period using the pricing structure per deliverable submitted by the Bidder.*

a. Early Intervention Monitoring Reviews

The Department requires that the contractor establish staff teams comprised of individuals with administrative expertise, and at least one individual meeting the definition of “qualified personnel” per Public Health Law, Section 2541, to conduct each monitoring review. Public Health Law can be accessed at https://www.health.ny.gov/regulations/public_health_law/.

The Department may determine which providers will be given priority for the specific reviews discussed within this section of the RFP and advise the contractor of this information for scheduling purposes.

i. Comprehensive Early Intervention Monitoring Reviews for Regulatory Compliance (CRRC)

A comprehensive monitoring review for regulatory compliance (CRRC) is defined as a systematic review of a service provider or municipality in accordance with NYS regulations and applicable state and federal laws. To complete CRRCs, the contractor is expected to follow specific protocols and use tools, as noted in the examples provided in Attachment A1 and A2. Final protocols and tools will be developed by the Department in conjunction with the contractor.

In order to ensure there is no substantial lapse in current monitoring efforts, CRRC’s must be scheduled and the contractor must begin reviews by month three of the first year of the contract.

The contractor will be expected to conduct the following pre-review activities:

- reviewing previous provider monitoring reports;
- developing a monthly monitoring schedule from the Department approved list of providers and list of municipalities that is accessible to the contractor through the Department’s current data system;

- inviting municipalities to attend the onsite monitoring review for providers who render EI services in their geographic location;
- sending pre-review materials to the provider and municipality scheduled for the monitoring review, which include Onsite Visit Agenda, and list of items to be available during the monitoring review process;
- determining, in collaboration with the Department, which and how many child records will be reviewed. The Department reserves the right to determine the sample selection criteria and the final number of child records the contractor must examine in rare or unusual instances when the Department receives a complaint regarding a specific issue that needs to be monitored. When determining the number of child records the contractor will be directed to review on site, the Department will consider factors, including for example: the size of the municipality or provider, number and type of children served, level of state and local monitoring, and fiscal audit history of the municipality or provider. The approximate number of child records reviewed may be five for individual providers and up to 20 for agency providers and municipalities;
- conducting parent interviews or conducting written parent surveys;
- reviewing of pertinent individual provider, agency provider and municipal staff and contracted personnel information available to the contractor through the Department's current data system;

The contractor will be expected to complete the following onsite review activities:

- use protocols and tools developed by the Department and the contractor. Protocols and tools used during the reviews may evaluate compliance with EI regulations, Public Health Law, and with signed and executed Provider Agreements between a provider and the Department;
- employ a variety of methods to evaluate regulatory compliance, which may include review of data in the Department's current data system, comparison of this data with agency source documents, review of child records, review of written policies and procedures, interviews with staff and program managers, observation of facilities where children receive EI services, and review of other documents utilized for the EI program;
- review provider credentials and other documents maintained in personnel records, i.e., State Central Register clearance documents;
- travel to various provider sites where records and staff are accessible. Individual provider CRRCs may occur at the provider's place of business (which may be his/her home) or an appropriate community location, as agreed to by the Department and the contractor.

The contractor will be expected to complete the following post-review activities:

- produce a system-generated monitoring report that allows for the insertion of customized findings language and comments; and
- receive, track and review all Corrective Action Plans (CAPs) and prepare draft CAP response documents.

The Department reserves the right to request that certain CRRCs of a provider or municipality will be performed within 15 business days of the Department's request. These "priority" CRRCs must follow the same protocol as other CRRCs and will not take more time, effort or resources than other CRRCs of an agency or individual provider or a municipality. The contractor will be paid the same rate for a "priority" CRRC as for routine CRRCs. A "priority" CRRC will count toward the agreed-upon target number of CRRCs to be completed each operational year of the contract. Results of CRRCs will be public information and may be shared with municipalities located within the geographic municipal area that EI services are rendered by the provider.

It is projected that completion of the CRRC activities will take the monitoring team an average of:

- One to three days for a municipality, depending upon the size of the municipality
- One to three days for an agency provider, depending upon the size of the agency, and
- Half of a day for an individual provider.

Each municipality would undergo a CRRC at least once during the duration of the contract, or more frequently, depending upon certain factors, such as previous monitoring findings, data performance or other issues identified by the Department. The Department anticipates that 12 municipalities will have a CRRC during each year of the contract.

Agencies and individual provider, including providers who only contract with other EI agencies (subcontractors), that have delivered services during the past three years and have an agreement or a pending agreement with the Department, may receive a CRRC at least once during the duration of the contract or more frequently depending on previous performance or other factors as determined by the Department.

The target number of agency providers statewide that will have a CRRC every year of the contract is 30; the target number of individual providers statewide, including subcontractors that will have a CRRC every year of the contract is 100.

ii. Investigative Monitoring Reviews (IMR)

An investigative monitoring review is defined as a more specified review of a provider or municipality that focuses on a complaint, inquiry or expression of concern received from stakeholders regarding a specific practice or practices of a provider or municipality. An IMR may be necessary to confirm any complaint or issue that has been raised. An IMR is specific to the nature of the concern and limited in scope. The contractor will use protocols and/or tools developed in conjunction with the Department, for which, an example of an IMR protocol is provided in Attachment B. The child sample will vary in size and selection criteria, based on circumstances surrounding the review, as determined by the Department. The contractor must use staff that is experienced in the specific early intervention service area that will be investigated, as determined by the Department. The contractor may use employed or subcontracted staff to conduct the IMR.

IMRs would include the following activities:

- review the area of concern or complaint in order to develop custom review criteria and tools to be used in the review;
- coordinate and implement the review on short notice, or unannounced notice to the provider or municipality;
- if required, develop a review process that protects the identity of the stakeholder expressing concern;
- interview parents and/or staff, review child records and/or other documentation, and observe children receiving services;
- develop and issuing customized reports detailing the results of the review;
- review corrective action plan;
- develop draft corrective action plan responses to send to the Department to review and issue;
- verify correction of noncompliance through onsite visits, desk reviews of submitted provider and /or municipal child records and/or other documentation, or through verification of data in the Department's current data system;
- collect of monitoring data regarding reviews, corrective action plans, and compliance.

The number of Investigative reviews will be based on the Department's receipt of a complaint or expression of concern received from a stakeholder, as described previously in this section of this RFP. Based on previous monitoring history, the number of IMRs that may be required by the contractor to complete, is estimated to be two per contract year. It is estimated that a IMR will take two monitoring staff no longer than two full days to complete.

iii. Verification of Correction Reviews (VR)

A verification of correction review is defined as a systematic, focused review of a provider or municipality that evaluates particular programmatic and/or administrative practices for which a provider was identified as being noncompliant during their comprehensive review and received a regulatory violation. The VRs must be completed within one year from when the provider received their original finding which must be corrected through review of child records.

Verification of Correction reviews (VRs) may be conducted to determine:

- whether a provider or municipality has complied with the terms of a Corrective Action Plan;
- whether the provider or municipality has remediated previously identified health and safety and unqualified personnel issues;

- verification of correction of findings that are violations of IDEA requirements;
- staff knowledge of correct policies and procedures for delivering services as demonstrated through an interview; and
- other issues identified by the Department.

The contractor will be expected to complete all of the following activities for a verification review, which may include activities for an on-site review and/or a desk review of child records submitted to them, as determined by the Department:

- identify providers who require verification reviews based on comprehensive review findings and submission of corrective action plans;
- in conjunction with the Department, develop a monthly schedule for verification reviews;
- review child records or other required documentation submitted by providers and municipalities to verify correction of noncompliance; and,
- complete and submit a verification of correction report to the Department.

To complete the VR, the contractor is expected to follow a protocol developed and approved by the Department, which may be similar to the protocol found in Attachment C of this RFP. However, for certain verification reviews, the Department reserves the right to modify that protocol and tool and/or develop a new protocol, tool and/or format for reporting verification review findings to the Department.

The sample size for child records to be reviewed for a VR may be five for an individual provider and ten for an agency or municipality, as determined by the Department. The Department reserves the right to determine the sample selection criteria and the final number of child records the contractor must examine in rare or unusual instances when the Department receives a complaint regarding a specific issue that needs to be verified as corrected.

It is projected that the completion of onsite activities to complete a VR will take an average of one day for one review staff to complete.

b. Monitoring Reports

For all monitoring reviews, the contractor will be responsible to produce standardized and/or customized monitoring reports that utilize data gathered from the review, using formats approved by the Department.

The comprehensive monitoring reports sent to providers and municipalities will use standard and customized language approved by the Department to:

- describe the monitoring process;

- identify the indicators that met the standard;
- identify regulatory violations; and
- identify areas that need improvement and provide technical assistance to assist the provider or municipality to correct any findings identified.

It is anticipated that some of the text of the reports will be generated from the electronic monitoring system. The system must calculate the numbers of records that were examined and associate the number of records with the appropriate findings statements. For IMRs and other reviews identified by the Department, it is required that the contractor, will have the ability to utilize customized language for each finding to describe the specific details of the problems identified by the reviewers or the Department. There may be occasional and rare instances where the monitoring report will need to contain entirely customized, rather than, standardized, language as determined by the Department.

Monitoring reports must be available for release to municipalities and providers that were reviewed, and municipalities in contract with the providers that were reviewed, within 45 days of the completion of the onsite review. There may be instances where reports are released after the 45-day timeframe due to additional research required by the Department. In no case should there be an instance where a report is released beyond 90 days after the date of the review. A sample report template is included in Attachment E of this RFP.

c. Corrective Action Plan Reviews

The contractor will be responsible for receiving and systematically tracking and screening all Corrective Action Plans (CAPs) received from municipalities and providers resulting from all of the various types of reviews. The contractor will review and develop draft responses to all CAPs, as described in the protocol in Attachment A1, and is responsible to send draft provider CAP responses to the Department. Finalized CAP responses will be issued by the Department.

When a provider or municipal report requires a CAP, the contractor will be required to:

- receive and track all CAPs;
- grant extensions under circumstances defined by the Department;
- screen all CAPs to ensure essential components are included;
- follow-up all CAPs when not received or essential components are missing with standardized correspondence developed in conjunction with the Department;
- within ten business days of the screen, send all municipal CAPs which were screened and determined to be complete, with relevant correspondence, to the Department to review; and
- within 45 days after provider CAPs are screened and determined to be complete, the contractor will follow the protocol in Attachment A1 and review all provider CAPs (with enclosures and materials submitted), develop appropriate draft CAP responses (in a format determined by the Department),

and send responses to the Department via email or other means agreed upon by the Department and contractor.

As part of the CAP process providers and municipalities may be required to submit child records to verify correction and implementation of their approved CAPs. The contractor will be required to review the child records to determine correction of noncompliance and adherence to the approved CAP.

The contractor will be required to provide standardized technical assistance to providers to assist with development of CAPs. When the providers' CAPs involve serious health and safety practice issues, unqualified personnel findings or other unusual circumstances that the Department identifies, the Department will work closely with the contractor to develop appropriate CAP responses relative to the unique situations. It is anticipated that no more than 10% of all CAPs will fall into this category.

For bidding purposes, it should be assumed that approximately 85% of comprehensive provider and municipal reviews for regulatory compliance and quality of services reviews will result in submission of a CAP. See Attachment H, EI Cost Proposal Bid Detail Sheet, for bidding numbers for the different types of reviews.

d. Early Intervention Monitoring Data

1. Maintain Early Intervention Monitoring Application and Store Early Intervention Monitoring Data

The Department will make available its existing monitoring data application and associated database to the successful contractor and will provide documentation of the data application to bidders, upon their request. The contractor will be responsible for providing all hardware and equipment to support and maintain the monitoring data application and to collect and maintain monitoring data. The existing monitoring application is a web-based application that is required to be hosted by the contractor at their business location.

The existing data application performs the following functions:

- allows for the collection of data during monitoring reviews using laptops provided by the contractor to its employees/contract staff;
- calculates the number of records examined and findings (as defined by the Department) associated with those records for each comprehensive review for regulatory compliance;
- electronically captures notes made by monitoring team members on laptop computers while conducting reviews;
- prints provider and municipal computer generated monitoring reports (see Attachment E) that contain:
 - a standardized narrative explaining the monitoring process;
 - instructions about how to submit a Corrective Action Plan, if appropriate;
 - standardized phrases, based on system calculations, that explain how many indicators in each topical area met all Early Intervention Program requirements;

- standardized phrases, based on system calculations and type of findings, that explain which indicators/findings in each topical area did not meet Early Intervention Program requirements and are considered regulatory citations or areas needing improvement, according to Department-defined standards; and
- standardized phrases that can be customized, describing specific issues and problems identified during the monitoring review, or by the Department, that resulted in a finding;
- captures and tracks data so the successful bidder contractor can periodically report to the Department the status of various monitoring events, documents and products, on a schedule determined by the Department;
- assists with monitoring review scheduling for the contractor;
- allows Department staff to directly access, view, and print monitoring reports from the contractor's system; and,
- maintains confidentiality of information and security of the data exchanged among the various Contractor sites and the Department, according to Department standards.

The contractor will assume use of the current monitoring application and associated database. The contractor will be responsible for supplying and hosting all of the hardware to collect and manage the monitoring data.

2. Modify the Early Intervention Data Application

During the previous two monitoring contracts, the Department made necessary adjustments to monitoring protocols, tools and criteria based on clarifications or new or revised program regulations and/or requirements. The Department requires that the contractor continue to make modifications to the current application as required.

a. Modifications will include, but not be limited to:

- improving the capability for Department staff to directly access monitoring data “on demand” by developing the capability to produce ad hoc management reports in a secure environment. Department staff will determine the content and format of these ad hoc reports by selecting chosen data fields. These ad hoc monitoring reports should produce a summary of selected indicator findings as well as track providers with violations of federal regulation that have corrected their findings within one year of identification. It is anticipated most reports will be in Microsoft Excel formats;
- adding or deleting tool indicators with corresponding report statements, and changing the corresponding calculations, as approved by the Department. The report database must be flexible enough to allow for language changes within the report template by the contractor and/or Department staff. These editing activities must be accomplished within the prescribed timeframes as determined by the Department and at no added cost;
- using parameters defined by the Department, adjusting the calculation function to distinguish between “met,” “improvement opportunity” and “regulatory finding” and to print out appropriate corresponding text for additional or revised report statements;

- developing the capability to maintain old data when indicators are no longer used and/or new indicators are added;
- maintaining the capability to link old data, as appropriate, to related new data for purposes of trend analysis. The ad hoc management report system should allow for integration of report findings across all past years of monitoring;
- developing the capability to search text for selected phrases and key words in selected individual or groups of monitoring reports;
- developing the capability for the application to produce customized monitoring reports, in a format defined by the Department, for comprehensive reviews for regulatory compliance, verification reviews and other reviews as indicated within this RFP;
- ensuring that the text of the application is able to be copied and pasted into Microsoft applications.

The contractor must guarantee that the modifications to the system will be completed to the Department's satisfaction. The cost of modifications and maintaining the monitoring application will be reimbursed based on a proposed hourly rate for modifying the monitoring application and an hourly rate for maintaining the monitoring application. The number of hours for each of these activities, per year of the contract, is projected and included in the EI Cost Proposal Bid Detail Sheet (Attachment H).

The contractor will be expected to work with the Department throughout the contract period to make modifications to the Early Intervention Monitoring data application to accommodate changes in the monitoring tools and reports, based on any new regulatory requirements or changes in Public Health Law.

b. Maintenance of the Early Intervention Data Application

The contractor will be expected to work with the Department, throughout the life of the contract, to adjust and improve the data application based on clarifications and new or revised program regulations and requirements. Programming for these adjustments, as well as programming that will allow the application to continue to operate in an effective and timely manner, will be considered "ongoing maintenance." "Ongoing maintenance" of the electronic monitoring data application is defined as all activities involved in programming or adjusting for ongoing changes/clarifications of EIP requirements and keeping the application in good working order, including any routine adjustments required to correct faults, improve performance or other attributes (e.g. new functions, faster, or more compatible with other systems), or to otherwise adapt the application to meet the Department's needs.

The above stated routine adjustments must be completed within ten business days upon written request (including email) of the Department.

c. Turnover

The contractor will be expected to provide for an orderly and controlled turnover of the data application to either the Department or a subsequent successor at the

end of the contract period, with minimum disruption of report generation, provision of monitoring reviews, or any other contract activity. At the end of the contract, the contractor will turn over complete electronic monitoring data application and associated database, with title, leasing, or license rights to the Department, or at the Department's option, a subsequent successor. The contractor shall similarly transfer to the Department or the subsequent successor all nonproprietary system software, data files, application programs and documentation. Additionally, the contractor must turn over all written policies and procedures, training materials, validation tools, and any resources utilized in conducting monitoring reviews (e.g. checklists or internal tools used by the contractor's staff).

The contractor must include a plan in the proposal which specifies what will be turned over, how the subsequent successor will be trained in protocols and practices, and how delivery of the system specifics will be made to the successor.

4. Early Intervention Administrative Services & Supports

a. Reporting Serious Problems to the Department

Following procedures defined by the Department, the contractor must immediately communicate to the Department any provider or municipal situations that are identified during monitoring that have the potential for imminent danger for children and/or their families receiving services, or that may indicate inappropriate fiscal practices. These situations include, but are not limited to: poor, inadequate or dangerous health and safety practices, unsafe physical plant, unqualified personnel providing services, failure to screen appropriate staff through the State Central Register of Child Abuse and Maltreatment, duplicate billing, services billed but not delivered, etc. Any findings of this nature should be communicated by the contractor to the Department in writing to include significant details of the findings within two business days of the monitoring review. The contractor must also report findings of this nature immediately to the provider during the exit interview and provide them with guidance so that they may immediately remedy the situation. The contractor should contact the Department during the course of the review for direction on what technical assistance should be provided to the provider or municipality with the serious finding.

b. Required Meetings

The Project Manager must be available to meet with Department staff at least two days each month in the first year of the contract, and a minimum of one day each month thereafter, to coordinate and evaluate the progress of contract work products and resolve outstanding problems as identified by the Department. Other contractor staff (direct or contracted) may be asked by the Department to attend these meetings when appropriate. At the Department's discretion, these meetings may occur by phone or in person in either Albany or another location as agreed to by the Department and contractor.

The contractor must convene a full day meeting in Albany, of the individuals conducting monitoring activities during the first year of the contract (at least quarterly), for the purpose of meeting with Department staff to review various aspects of monitoring, to train on new monitoring protocols, or other activities. During the remaining term of the contract, the contractor will convene at least two full day meetings each year in Albany of the staff conducting monitoring activities so that new protocols and procedures or other training can be conducted.

The contractor must be prepared to convene, at the Department's discretion, any relevant staff to answer questions and provide additional training to attend at least two meetings each year in Albany or another location is agreed to by the Department and contractor.

The contractor is responsible for all costs associated with the meetings described above and the costs for attendees working on behalf of the contractor.

In addition to the meetings described above, the Project Manager, Monitoring Coordinator, Data Manager, as described below, must be available to participate in weekly conference calls with Department staff to report on and discuss work progress, clarify issues, respond to questions, request guidance, and discuss other pertinent related issues related to monitoring activities.

c. Monitoring Personnel

The key positions of Early Intervention Project Manager, Monitoring Coordinator, and Data Manager cannot be subcontracted out, nor may they be employed on a consultant basis. These positions must be filled by employees of the contractor.

With the Department's prior written approval, the contractor may make substitutions to key project personnel provided that the substitutes/replacements possess equal or greater qualifications.

i. Project Manager

The contractor must designate a full time "Project Manager" who will be responsible for overall implementation and delivery of contract work products for the duration of the contract period. This person will ensure that all work conducted under the contract is performed according to Early Intervention Program policies and standards of performance. The Project Manager will be responsible for the overall quality, accuracy, and timeliness of contract work products and deliverables. In addition, the Project Manager will have responsibility for oversight of data system enhancement and maintenance conducted by direct or contracted staff. The Project Manager will also provide oversight of data report generation functions conducted by direct or contracted staff, to ensure the accuracy and quality of data reports produced, and to ensure the reports meet the needs of the State.

ii. Monitoring Coordinator

The contractor must designate a full time staff person to serve as “Monitoring Coordinator.” The Monitoring Coordinator is expected to be available to meet in person, on short notice, with Department staff and have an office space for training monitoring review staff. Training of monitoring review staff will occur during each change in the monitoring protocol and monitoring review tool. This is expected to occur periodically throughout the contract term. The Monitoring Coordinator will coordinate all statewide monitoring team activities.

The Monitoring Coordinator will be responsible for day-to-day implementation of contract deliverables and resolution of problems relating to monitoring encounter activities. S/he will coordinate scheduling, training, and other monitoring encounter activities that require a statewide approach.

The Monitoring Coordinator will be responsible for supervising the review teams that complete monitoring reviews of municipalities and agency and individual early intervention providers and ensuring that individuals conducting monitoring reviews:

- use Department approved monitoring tools and follow approved monitoring protocols;
- receive up-to-date information regarding revisions to the monitoring protocol and changes to the early intervention law, regulations, or Department policy and procedure;
- receive initial and ongoing training, including orientation and promotion of consistent implementation of the monitoring protocol, tools, and regulations;
- are observed while performing onsite activities;
- receive ongoing technical assistance when they have questions;
- are formally evaluated regarding the quality and quantity of their work on a regularly scheduled basis, including direct observation;
- produce high quality, accurate reports and documents;
- provide accurate and timely technical assistance;
- appropriately screen, review and recommend approval for corrective action plans; and,
- conduct themselves in a professional manner.

The Monitoring Coordinator will be the primary contact with the Department regarding day-to-day monitoring activities. S/he will work closely with the Department to successfully address any concerns about team member conduct, technical assistance, monitoring protocols, content of computer generated monitoring reports and recommendations regarding corrective action plans.

iii. Monitoring Assistants

The contractor must designate at least two FTE Monitoring Assistants to work under the direction of the Monitoring Coordinator. These individuals will assist the Project Manager, Monitoring Coordinator and Review Staff with all activities involved in the scheduling and implementation of monitoring reviews and subsequent issuance of reports, screening and recommending approvals for CAPs, and CAP-related correspondence, and quality assurance activities.

iv. Early Intervention Data Manager

The contractor must directly employ one “Data Manager” at least a half FTE. This individual will be responsible to oversee the following data-related functions as they pertain to the monitoring application and database :

- data management;
- application programming; and,
- data analysis.

The Data Manager must have qualifications that include at least three years of experience in the field of computer programming and systems analysis and expertise including, the design and implementation of data applications, the conduct of feasibility studies, development of program and application specifications, flowcharting, coding, development of test data, program and parallel testing, and post implementation follow-up.

The contractor may subcontract staff to perform application programming and/or report development and data analysis. The contractor must provide the name (s) of all subcontractor agencies they intend to utilize for this portion of deliverables. The Data Manager will work closely with the Project Manager and Department staff to identify and resolve problems and deficiencies with respect to the electronic monitoring system. This individual will direct and coordinate the work of any contractor staff or subcontractors, who improve, enhance and maintain the monitoring application or database.

Data Management functions include:

- ensuring the accuracy and timeliness of changes to the monitoring application;
- ensuring the quality of products produced by the monitoring application;
- selection of child samples for all providers and municipalities to be reviewed from the Department’s current data system using criteria established by the Department;
- providing the Department with timely, understandable documentation regarding the monitoring application and database and contract products;
- collaborating directly with Department Early Intervention Program staff to ensure the monitoring application, and database are meeting the needs of the Department; and,

- working directly with the Project Manager, and Monitoring Coordinator to ensure the monitoring application meets the needs of both the contractor and the Department with respect to monitoring activities, reporting, and data analysis activities, meet the needs of both the contractor and the Department with respect to monitoring activities.

Programming functions include:

- ensuring requested improvements, modifications, and changes to the existing monitoring application are completed in a timely manner and meet the needs of the Department and the contractor; and,
- overseeing development of the capability for the Department to directly access monitoring and provider application data.

Data Analysis and reporting functions include:

- ensuring tracking systems for monitoring and application review events and products for the Department and contractor are developed and implemented;
- providing routine and ad hoc reports that meet Department and contractor's needs; and,
- working with the Project Manager, Monitoring Coordinator, and the Department to ensure data are appropriately and correctly collected and recorded; methodologies used to analyze data are accurate and correct; and, reports generated are accurate and timely.

d. Teams to Conduct Statewide Early Intervention Monitoring Reviews – Review Staff

The contractor must provide a sufficient number of individuals to comprise teams (Review Staff) that will conduct simultaneous monitoring reviews throughout the state as described in this RFP. Each comprehensive review for regulatory compliance, and investigative monitoring review, will be conducted using a team of at least two individuals, unless otherwise specified by the Department, and, who meet the following qualifications:

- individuals must have had at least one year experience in the administration and/or fiscal management of organizations providing health and human services, preferably to young children with developmental delays and their families (the contractor may provide such training, after Departmental approval, and should be prepared to have that training prior to implementation);
- individuals must have one year experience in the area of quality improvement (e.g., utilization review, performance based monitoring, technical assistance); and,
- one of the team members must be recognized as qualified personnel by the Early Intervention Program, as defined in Public Health Law, Section 2541, preferably with experience in the provision of developmental services/therapies to children ages birth to five years and their families. The contractor will be responsible for verifying the currency of certification,

registration and licensure of each team member at least every six months during the term of employment.

Verification of Correction Reviews (VR) may be conducted by one staff person, as determined by the Department, depending upon the extent of the review and expertise required to conduct the VR.

Individuals conducting the monitoring reviews must demonstrate that there is not a conflict of interest with respect to the relationship with the provider(s) or municipalities being monitored. Individuals conducting the monitoring reviews must not review any provider or municipality where they were contracted or employer where they previously provided services.

f. Administrative Support

The contractor must provide other administrative support that may be in addition to those duties performed by the Monitoring Assistants that will allow the Project Manager, EI Data Manager, Monitoring Coordinator, and monitoring teams to complete monitoring project activities in an efficient and timely manner. This support includes:

- providing customary secretarial services;
- performing data entry;
- conducting mass mailings ;
- using overnight mail;
- arranging for courier services;
- procuring appropriate equipment, including cellular phones and laptop computers;
- providing secure storage.

The contractor may propose other, professional support as necessary to complete the project requirements in a timely and accurate manner.

5. Early Intervention Progress Reports

a. Weekly Reports

During the term of the contract, the contractor will submit weekly reports on the numbers and status of unusual monitoring findings or problems, and newly identified health and safety issues, unqualified personnel or fiscal issues or other issues as identified by the Department. The formats for these weekly statistical reports will be determined by the Department. Most statistical reports will be an exchange of data in Excel spreadsheet formats.

b. Monthly Reports

During the contract period, the contractor will submit monthly statistical reports summarizing the numbers and types of activities related to monitoring completed during the previous month, including completed monitoring reviews, completed and mailed reports, number of Corrective Action Plans received, and outstanding Corrective Action Plans. The contractor will also report any changes made to the monitoring data system and any other data or information requested by the Department in these reports.

The Department reserves the right to determine the format and content of monthly statistical reports.

c. Quarterly Reports

During each contract year, the contractor will submit quarterly reports, each describing contract activities for the previous three-month period that includes quarterly statistical reports summarizing the numbers and types of activities related to monitoring completed during the previous quarter, changes made to the monitoring data system, progress made in achievement of deliverables, completed activities, status of incomplete activities, issues or problems that were encountered and resolved or are outstanding, and any other data or information requested by the Department. These reports must also include data related to findings determined through monitoring efforts that are violations of Federal regulations and requirements. This data will include for each provider or municipality monitored, each of the findings made related to federal noncompliance and the verification of correction data for each of these findings per individual child and overall. The Department reserves the right to determine the format and content of quarterly reports.

d. Annual Reports

The contractor will submit an annual report describing monitoring activities for the previous three month period per the Quarterly Report requirements stated above, and which also summarizes monitoring-related activities completed during the previous 12 months.

e. Ad Hoc Reports

The contractor will also report on any other data or information requested by the Department. All reports must be submitted in a format as determined by the Department within 10 business days of the Department's written request.

6. Early Intervention Performance Standards

a. Monitoring Reviews - All types (comprehensive, investigative, verification reviews)

Reports released must be within 45 days of the onsite monitoring review, free from errors in calculation, containing no typographical or grammatical errors, and be easily understood, with respect to findings and additional comments, by the reader. Payment may be withheld for reports not meeting Department standards, and such reports may have to be corrected and/or re-released before payment is issued, as determined by the Department.

CAP responses must contain no typographical or grammatical errors, and be easily understood by the reader. Payment for the review completed may be withheld for CAP responses not meeting Department standards, and such CAP responses may have to be corrected and/or re-released before payment is issued, as determined by the Department.

7. Early Intervention Schedule of Deliverables

a. Early Intervention Monitoring Products

All required monitoring activities completed must have final monitoring reports available for release within 45 days of the completion of the onsite review unless otherwise determined by the Department. In no event should a report be released more than 90 days from the date of the review, in the case of unusual determinations that would require input from the Department or input from other State agencies:

- corrective action plans (CAPs) must be screened, determined to be complete or requiring additional information, and a letter sent to the provider/municipality explaining problems, within seven days of receipt;
- all monitoring-related activities must be entered into a tracking database within five business days;
- verification of correction correspondence must be reviewed by the contractor within 30 days of receipt of submitted documents, and the corresponding reports submitted to the Department of the outcome for each VR within 45 business days. The bidder must verify correction of identified findings through review of subsequent child records at the time of the monitoring and collect additional child records post review to ensure correction within one year of the monitoring event;
- related monitoring correspondence and materials must be provided to the Department.

b. Early Intervention Progress Reports

- the weekly reports specified earlier in this RFP must be submitted no later than Wednesday of the following week;
- the monthly statistical reports specified earlier in this RFP must be submitted within five calendar days of the end of each month during each year of the contract;
- the quarterly progress reports specified earlier in this RFP must be submitted within 30 calendar days of the end of the last month of each quarter during each year of the contract; and,
- the annual report specified earlier in this RFP must be submitted within 30 calendar days of the end of each contract year.

8. What the New York State Early Intervention Program Will Provide

The Department will automatically provide all updated guidance documents and/or emails and letters to the field, and copies of the Department's "Report of the Recommendations" for all published clinical practice guidelines to the contractor. The Department will also provide the current protocols and tools developed for monitoring for regulatory compliance and any other protocols developed for investigative reviews, verification of correction reviews and quality of services reviews. The Department will provide the contractor with access to the current New York Early Intervention System (NYEIS), which is the data system utilized by all EI providers and municipalities that captures EI child case management, and provider data for all EI eligible children. Contract staff will need to access NYEIS in order to review provider information, child sample information and other data captured to conduct pre-review activities for monitoring reviews. In order for the contractor staff to access to NYEIS, the contractor staff must sign confidentiality agreements with the Department and have a Health Commerce System account.

D. PROPOSAL REQUIREMENTS

The bidder must submit Technical and Cost proposals for all monitoring activities included in this RFP for the Early Intervention Program.

1. Part 1 - Technical Proposal

The requirements established by this RFP for proposal content and format will be enforced in evaluating proposals. The bidder's compliance to the format prescribed herein, as well as the bidder's response to each specific requirement and question stated in the RFP will be considered during the evaluation process.

The bidder should submit a Technical Proposal that addresses the RFP requirements for the Early Intervention Program.

a. Proposal Narrative for Early Intervention Monitoring – maximum of 20 pages

The proposal should be typewritten on a maximum of 20 single-sided pages or ten double sided, 8 1/2 x 11, double spaced, using a 11 point font or larger. **Evaluators of the Technical Proposal will be directed to stop reading if there are more than 20 pages included in a proposal narrative.**

Attachments, such as resumes of key staff (Project Manager, Monitoring Coordinator and Data Manager) will not be counted toward the 20 pages, and should be included. The Bidder must specify how the contract deliverables presented in the proposal will be delivered by direct staff and/or subcontractors. If known subcontractors are to be proposed, their full name and address must be included with the Technical Proposal.

Attachments such as DVD's or other training materials or brochures, should not be submitted as part of the Technical Proposal. In a clear and concise manner, the bidder should provide a complete description of what activities are to be accomplished and under what circumstances.

The contractor must designate the location and hours of their business office (s) and provide a description of the resources available from their office(s) that will be dedicated to this contract. If multiple sites will be used, a description of each site must be provided.

If the bidder has identified individuals to fill the following project management positions at the time the proposal is submitted, the Proposal Narrative should include the names of the individuals and their resumes should be appended to the proposal:

- Project Manager;
- Monitoring Coordinator;
- Data Manager.

Preference will be given to those organizations with a Project Manager who has qualifications that include three (3) years of experience working in the Early Intervention Program, and one (1) of the three years working in the area of quality improvement, utilization review and performance based monitoring.

Preference will be given to those organizations with a Monitoring Coordinator who has qualifications that include three (3) years of experience working in the Early Intervention Program, and one (1) of the three years working in the area of quality improvement, utilization review, and performance based monitoring.

Resumes that include experience working in programs related to assessment and evaluation of programs delivering developmental services to young children will be scored higher in the technical evaluation process

For describing "b." and "c." below, use the Technical Proposal Work Plan template form provided as Attachment G. Make additional copies as needed. Use no more than ten pages total.

b. Project Activities to Meet Deliverables

Activities must be responsive to the Department's monitoring initiatives stated in this RFP. Bidders should describe:

- what activities are to be accomplished and under what conditions;
- the nature and scope of the activities that lead to the successful completion of each deliverable; and,
- how the contract activities presented in the proposal will be delivered.

c. Persons Responsible and Completion Dates

The Bidder must identify by title (and name, if known), the individual(s) responsible to ensure work activities as described in the RFP are carried out. The responsible individual(s) must have appropriate authority to ensure successful completion of each major work activity. The Bidder must include a detailed timeline for the implementation of the work activities which includes beginning dates for each activity and the completion of major interim steps leading to the completion of each deliverable. Bidders should provide:

- a detailed timeline to meet the prescribed schedule of completing required activities in accordance with the deliverables outlined in Section C.2.a. of this RFP;
- personnel descriptions with the position/title for the person(s) responsible for each work plan activity. Bidders should identify individuals who will be responsible for certain project management positions, if known, as directed in Section C.3.c. of this RFP;
- and fully describe any subcontracts the vendor intends to enter into for the performance of contract obligations. The key positions of Project Manager, Monitoring Coordinator, and Data Manager cannot be subcontracted. Prior written approval by the State shall be required for all subcontracts. All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of this Agreement.

d. Bidder Qualifications and References

Maximum of five pages. The bidder and/or its subcontractor(s) are required to have certain experience as described in Section C.1. of this RFP. Any vitae/resumes of proposed project management staff should be included as attachments to the proposal. The Bidder should:

- describe how the bidder is an existing public or private organization, company, partnership or corporation which is legally authorized to perform the contracted services;
- describe how the bidder is qualified to bid by meeting all requirements of Section C.1. of this RFP; and,
- include organization chart(s) describing where the project staff will be located and the reporting structure of key project staff as attachment(s) to the proposal.

e. Bidder Information: Requirements and References

i. Required Forms:

The following forms should be submitted with the Technical Proposal:

Transmittal Letter (Attachment F)

Lobbying Form (Attachment I)

ii. References (required)

The bidder should provide a list of at least three current contracts for quality assurance-related activities it has executed during the past three years, as well as any indirect or sub-contractual contract work it performed where federal, state or local public funding was used. In each case, the governmental agency that provided oversight of the contract or funding should be listed, along with a brief description of the contracted work, the contract number, term of contract or dates of work, contract value, and the name of the contract manager and telephone number.

iii. Assurances

By submitting a proposal in response to this RFP, the bidder assures that the following is true:

- the organization is able to fulfill all statewide requirements and has or will have adequate space and capacity to fulfill contract deliverables;
- the organization and its employees, subcontractors, consultants and volunteers will not be directly or indirectly involved in the provision of early intervention or optional component services while conducting the activities described in the proposal, and have no conflict of interest with respect to conducting the duties and responsibilities outlined in this RFP. The Department reserves the right to make a final determination regarding conflict of interest with respect to the Contractor's relationship with other providers or parties and the Contractor agrees to abide by this decision;
- the organization and its employees, subcontractors, consultants and volunteers will collaborate with the Department and its designees; and,
- the organization and its employees, subcontractors, consultants and volunteers will implement and maintain policies and procedures to assure the confidentiality of personally identifiable data, information or records pertaining to children and families participating in the Early Intervention Program according to Section 69-4.17 of Early Intervention Program regulations and other applicable State and federal laws and regulations.

2. Part 2 - Cost Proposal

a. Required Forms

The following forms should be submitted with the Cost Proposal:

El Cost Proposal Bid Detail Sheet (Attachment H),
M/WBE Forms (Attachment L)

The numbers used in the Cost Proposal Bid Detail Sheet are provided for comparison and rating purposes and for setting targets and contract pricing.

Payment will be based on the actual number of satisfactorily completed deliverables. The Department cannot guarantee the number of the different types of monitoring reviews or clinical records that will be reviewed by the contractor resulting from this RFP. The Department reserves the right to limit the number of the different types of monitoring reviews and clinical record reviews during any contract year.

Costs should be inclusive of all activities necessary to implement a successful contract based on the information included in this RFP.

3. Method of Award

At the discretion of the Department, any or all bids may be rejected. The evaluation of the bids will include the considerations described in this subsection.

The Department will accept proposals from a single organization or agency that will provide for the statewide administration (coordination, supervision, fiscal oversight, recruitment, training, information dissemination, and similar administrative duties) and delivery of the contract deliverables described in Section C.3 of this RFP. The entire state must be covered in each proposal.

During the evaluation process, the Department may require clarifying information from a Bidder for the purpose of assuring the Department's full understanding of the Bidder's responsiveness to the RFP requirements. This clarifying information must be submitted in writing in accordance with formats set forth in this RFP, and, if received by the due date set forth in the Department's request for clarification, will be included as a formal part of the Bidder's proposal.

Proposals deemed by the Department to be responsive to the Submission Requirements set forth in the RFP will be evaluated by the Department. The Department reserves the right to seek a "best and final offer." The Department will select the Bidder that submits the proposal that offers the best value. The best value basis means awarding the contract for services to the Bidder that optimizes quality, cost, and efficiency among all responsive and responsible Bidders.

The Department will use a combination of pass/fail and scored evaluation methods to rate Bidder's proposals on a best value basis. The Department will evaluate proposals using the following factors and weights:

Initial Screening	Pass/Fail
Technical Proposal	70 Points
Cost Proposal	30 Points
Total Possible Score	100 Points

The Bidder's technical and cost proposal will be separately evaluated and scored as described below.

i. Initial Screening

The Bidder's proposal will receive an initial screening and evaluation to determine if RFP Administrative Requirements were met. The screening may result in either a passing or failing evaluation by the Department. The Department maintains sole discretion to determine whether the Bidder's proposal:

- appears complete (by addressing all mandatory RFP requirements);
- conforms to the format for proposals as prescribed by the RFP; and,
- contains all required forms.

ii. Technical Score

A Technical Evaluation Team will evaluate and score each bidder's Technical Proposal based on each bidder's ability to deliver the services described in this RFP. Up to 70 points will be awarded for the evaluation of the bidder's Technical Proposal. The highest scoring technical proposal will receive the full technical points available. The evaluation of the bidder's technical approach will be based on the proposal, responses to any clarifying questions, and corporate and personnel reference checks. Information from the Cost Proposal or the evaluation of the Cost Proposal will not be available to the Technical Evaluation Team during their evaluation.

Detailed evaluation criteria will not be disclosed to bidders prior to bid submission.

iii. Cost Score

A Financial Evaluation Team will review and score each Cost Proposal that meets the requirements for the Cost Proposal. The Cost Proposal review will be independent of the Technical Proposal review, and the Financial Evaluation Team will not see or participate in review of the Technical Proposal. For those bids meeting the requirements of the Cost Proposal, the Financial Evaluation Team will score the total project cost. Up to 30 points will be awarded for the evaluation of the Bidder's Cost Proposal. The lowest cost Bidder will receive the full cost points available.

Cost will be calculated as $(A/B)*C$ [(A divided by B)] times C) where:

- A is Total Price of lowest price Cost proposal;
- B is Total Price of Cost proposal being scored; and,
- C is Cost points available.

a. Total Score

To arrive at the Total Score, the Department will combine the Bidder's Technical Score and Cost Score. The maximum score a Bidder can receive is 100 points.

Technical Score: up to 70 points

Plus Cost Score: up to 30 points

Total Score: up to 100 points

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

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

E. ADMINISTRATIVE

1. Issuing Agency

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

2. Inquiries

Any questions concerning this solicitation must be directed to:

Email: EI.MONITORING.RFP@health.ny.gov
New York State Department of Health
Division of Family Health, Bureau of Administration
ATTN: EI Monitoring RFP
ESP Corning Tower, Room 859
Albany, New York 12237
(518) 474-4569

Questions and answers, as well as any RFP updates and/or modifications, will be posted on the Department of Health's website at <http://www.health.ny.gov/funding/> by the date indicated in the Schedule of Key Events on the cover of this RFP. Bidders wishing to receive these documents via mail must send a request, in writing, to the Department at the address above.

3. Submission of Bid Proposal

a. Proposal Format

Proposals should be prepared simply and economically, providing a concise description of the Bidder's ability to meet the requirements of the RFP. The technical and cost proposals must be in separate, clearly marked envelopes (no cost or pricing information should be submitted in a Bidder's technical proposal) and identified as follows:

RFP# 16234 - Technical Proposal Early Intervention Program Monitoring and Quality Improvement Services.

Name of Bidder

RFP# 16234 - Cost Proposal for Early Intervention Program Monitoring and Quality Improvement Services.

Name of Bidder

To promote uniformity of preparation and to facilitate the review, the Technical Proposal(s) should be submitted on white paper and the pages should be consecutively numbered from one to the end for each proposal. The Department requires that the Technical Proposals adhere to the following criteria:

- proposal and appendices should be typewritten
- proposal and appendices should be on 8.5 by 11-inch paper;
- proposal and appendices should use 11-point font or larger;
- proposal narrative should be double-spaced; and,
- the proposal narrative should **not** exceed 20 pages in length or ten pages that are double sided. Illustrations, resumes, letters of support and any other required attachments are not considered part of the proposal narrative.

These requirements are made for the purpose of enabling the evaluators to adequately review the Technical Proposals. Proposals must be self-contained; no models, videotapes or Web site postings will be accepted. Illustrations that support the text should be simple and direct and should be reproducible in black and white; photographs (if appropriate) should be black and white.

The Bidder's technical and cost proposals must not be conditioned and/or contingent. This will result in disqualification of the proposal.

Proposals failing to provide all response requirements or failing to follow the prescribed format may be removed from consideration or points may be deducted when the proposal is rated.

b. Proposal Submission

Interested vendors should submit two originals, five signed copies and one CD (one separate CD for the technical proposal and one separate CD for cost proposal) of their Early Intervention Program Monitoring Proposal. Bid Proposals are due at the time and date indicated on the RFP cover page in the Schedule of Key Events. No proposals will be accepted after that time. All proposals must have the detailed bid sheet(s) (Attachment H) filled out in their entirety and include the responsible individual for contract negotiation and their signature. Where signatures are required, the proposals designated as originals should have a handwritten signature and be signed in ink. All evidence and documentation requested under Proposal Requirements should be provided at the time the proposal is submitted.

No proposal will be accepted by fax, electronic mail (e-mail) or telephone. Responses should be clearly marked RFP # 16234 and each must be in two distinct parts (technical and cost proposals) separately sealed and identified.

All proposals should be directed to:

New York State Department of Health
Division of Family Health, Bureau of Administration
ATTN: GMO Unit - EI Monitoring RFP
ESP Corning Tower, Room 859
Albany, New York 12237
(518) 474-4569
Email: EI.MONITORING.RFP@health.ny.gov

It is the bidders' responsibility to see that bids are delivered to Room 287 prior to the date and time of the bid due date. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to room 287 will not be considered.

4. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of proposals;
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
7. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the proposals received;
15. Every offer shall be firm and not revocable for a period of three hundred and sixty-five days from the bid opening, to the extent not inconsistent with section

2-205 of the uniform commercial code. Subsequent to such three hundred and sixty- five days, any offer is subject to withdrawal communicated in a writing signed by the offerer; and,

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

5. Payment

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

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: 3450257 <<Contract #>>**

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

**NYS Department of Health
Unit ID 3450257
PO Box 2093
Albany, NY 12220-0093**

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 epayments@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 State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment terms will be:

In exchange for the provision of all monitoring reviews, clinical record reviews, modifications and maintenance of the electronic monitoring data system, in accordance with the terms and conditions specified in this Request for Proposals and the Department's protocol, the contractor will be entitled to receive payment for each deliverable produced to the satisfaction of the Department. Such payment will be based upon the amount enumerated in the Bidder's Proposal, which will be incorporated into the resultant contract as Appendix C.

The Department will pay the contractor an administrative services fee in four equal quarterly payments annually based upon the administrative services fee enumerated in the Contractor's Proposal. The Administrative Services price may not exceed ten percent of the grand total five year bid price.

In order to be eligible for payment, the following information must accompany each invoice submitted by the Contractor. For ease of submission, reporting information may be combined into one quarterly or annual report with separate categories for each of the following areas that will need to match the invoice:

- Monitoring Reviews (for regulatory compliance reviews, quality of service reviews including CAPS, investigative reviews and verification of correction reviews): a Quarterly Report or Annual Report (as appropriate), summarizing the monitoring review activities in the preceding quarter and contract year, respectively. This report must include a list of providers associated with the delivery of each of the monitoring reviews. The completion date of each review will be utilized to determine the price paid per monitoring review and also as a basis for determining the number of annual reviews completed in a contract year. A review will be considered eligible for 100% of payment when the pre review and onsite review activities are completed, and the report is issued. This also applies to verification review activities whether they are completed at the provider's site or by desk review of documentation submitted. This report is due by the earlier of either 30 calendar days after the end of the quarter or the date which an invoice is submitted for payment.
- Corrective Action Plans (CAP): a Quarterly or Annual Report (as appropriate), summarizing the CAP activities in the preceding quarter and contract year, respectively. This report must include a list of providers associated with the draft CAP reviews completed. The completion date of each CAP review will be utilized to determine the price paid per CAP review and also as a basis for determining the number of CAP reviews completed in a contract year. A review will be considered complete and eligible for payment when the CAP response is released to the provider by the Department per the established Department

protocols. This report is due by the earlier of either 30 calendar days after the end of the quarter or the date which an invoice is submitted for payment.

- Modify Monitoring Application: A Quarterly or Annual Report (as appropriate), delineating the status of each task related to modifications of the monitoring application that have been completed and the tasks (modifications) in progress during the preceding quarter and accomplished throughout the contract year, respectively. The payment for this component of the contract will be paid quarterly, based on hours of modification completed during the quarter and according to the fee in the bidder's proposal. If the contractor fails, in the reasonable judgment of the State, to make the required modifications to the Early Intervention monitoring application, full or partial payment for this category may be withheld by the State until such time as the State reasonably determines that the application meets the needs of the State.
- Maintain Monitoring Application and Associated Database: The payment for this component of the contract will be paid quarterly based on hours of maintenance completed during the quarter and according to the fee in the successful bidder's proposal.

A Quarterly or Annual Report will delineate the activities undertaken related to the ongoing maintenance of the monitoring application during the preceding quarter or contract year, as appropriate. "Ongoing maintenance" of the monitoring application and associated database is defined as all activities involved in keeping the application and database in good working order. The Quarterly or Annual Reports will reflect the status of these activities and the progress made during the preceding quarter. These Reports are due by the earlier of either 30 calendar days after the end of the quarter or the date which an invoice is submitted for payment.

In addition to the above information, the Annual Report shall include the following documentation regarding the monitoring application:

- application user and operation manuals;
- identification of the operating system(s), version and release being used to operate the monitoring application and store the associated database;
- lists of personnel employed/contracted to perform development/maintenance work on the monitoring application and associated database;
- one copy of the following documentation:
 - i. all software, including computer programs written and all subroutines called, executed, or otherwise used by the Early Intervention monitoring application and associated database;
 - ii. source code program listings, on paper, for all production programs;
 - iii. the job control language to operate the elements set forth in the three preceding clauses;
 - iv. file and record descriptions of all data files, including data elements, used by the Contractor in collecting data during monitoring encounters and producing reports;

- v. description of all manual procedures associated with the elements set forth in all preceding clauses of this Section; and,
- vi. description of facilities and equipment related to the monitoring application and associated database.

The contractor shall provide the documentation required by this Section to the State as specified, unless the State, in its discretion, waives a particular submission. In the event documentation is unavailable or incomplete, the Contractor shall report on the status of the unavailable or incomplete documentation, including a projected date for completion, and reason(s). All information and documentation must be in a form acceptable to and usable by the State. Delivery of information and documentation by the Contractor constitutes a material obligation of performance under this Agreement.

Payment Penalties.

1. If at the end of any quarter during the contract period, the Contractor fails, in the reasonable judgment of the State, to properly maintain the Early Intervention monitoring application and associated database, full or partial payment for that category may be withheld by the State until such time as the State reasonably determines that the system meets the needs of the State.

2. If, at the end of any contract operating year, the number of monitoring reviews, CAP reviews, and/or clinical record reviews acceptable to the State is less than 80% of the target number agreed to under this contract, the Contractor's claim for the administrative services fee may be withheld by the State in an amount equal to the proportional percent of the target deliverables not completed up to 25%, whichever is less. If the Contractor desires to complete more monitoring activities or application reviews than the target number agreed to under this contract, at any time during the contract, they may do so only with the approval of the Department. Completing more monitoring activities or application reviews than the target number agreed to under this contract will not increase the administrative fee.

6. Term of Contract

This Agreement shall be effective upon approval of the New York State Office of the State Comptroller.

It is the intention of the Department to award a five-year contract commencing 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 in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

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. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment K).

10. State Consultant Services Reporting

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

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

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

State Consultant Services Form A

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

State Consultant Services Form B

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 attached hereto. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must complete and submit to the Department of Health the form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with

DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

NYS Taxation and Finance Contractor Certification Form ST-220-TD may be accessed electronically at:

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

15. Piggybacking

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

16. Minority & Woman-Owned Business Enterprise Requirements

Pursuant to New York State Executive Law Article 15-A, the New York State Department of Health ("DOH") 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 DOH 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 DOH 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, DOH hereby establishes an overall goal of **30%** for MWBE participation, **15%** for Minority-Owned Business Enterprises (“MBE”) participation and **15%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs and outreach efforts to certified MWBE firms). A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that DOH may withhold payment pending receipt of the required MWBE documentation. For guidance on how DOH will determine “good faith efforts,” refer to 5 NYCRR §142.8.

The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com>. The directory is found in the upper right hand side of the webpage under “Search for Certified Firms” and accessed by clicking on the link entitled “MWBE Directory”. Engaging with firms found in the directory with like product(s) and/or service(s) is strongly encouraged and all communication efforts and responses should be well documented.

By submitting a bid, a bidder agrees to complete an MWBE Utilization Plan (Attachment L, Form #1) of this RFP. DOH will review the submitted MWBE Utilization Plan. If the plan is not accepted, DOH may issue a notice of deficiency. 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. DOH 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 (if applicable); or
- d) If DOH determines that the Bidder has failed to document good-faith efforts;

The Contractor will be required to 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 DOH, but must be made no later than prior to the submission of a request for final payment on the Contract.

The Contractor will be required to submit a Contractor’s Quarterly M/WBE Contractor Compliance & Payment Report to the DOH, 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.

If the Contractor is found to have willfully and intentionally failed to comply with

the MWBE participation goals set forth in the Contract, such finding will constitute a breach of Contract and DOH 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.

New York State certified Minority- and Women-Owned Businesses (M/WBE) may request that their firm's contact information be included on a list of M/WBE firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on the Department's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS M/WBE certification to EI.MONITORING.RFP@health.ny.gov before the Deadline for Questions as specified in the key schedule of event. Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

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. Equal Employment Opportunity (EEO) Reporting

By submission of a bid in response to this solicitation, the Bidder agrees with all of the terms and conditions of Attachment P Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. Additionally, the successful bidder will be required to certify they have an acceptable EEO (Equal Employment Opportunity) policy statement in accordance with Section III of Appendix M in Attachment P.

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.

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, 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.

To ensure compliance with this Section, the Bidder should submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Attachment N, Form #4) identifying the anticipated work force to be utilized on the Contract. Additionally, the Bidder should submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement (Attachment N, Form # 5), to DOH with their bid or proposal.

18. Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies 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" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/reggs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Department of Health receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Health 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 Department of Health shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department of Health 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.

19. Encouraging Use of New York Business 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 M 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.

- 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 TO THE RFP

Attachment A1	Comprehensive Monitoring Review Protocol
Attachment A2	Comprehensive Monitoring Review Tool
Attachment B	Investigative Monitoring Review Protocol
Attachment C	EI Verification of Correction Review Protocol
Attachment D	Approved and Contracted Providers
Attachment E	Sample Monitoring Report
Attachment F	Transmittal Letter
Attachment G	Technical Proposal Work Plan

Attachment H	EI Cost Proposal Bid Detail Sheet
Attachment I	Lobbying Form
Attachment J	No Bid Form
Attachment K	Vendor Responsibility Attestation
Attachment L	M/WBE Procurement Forms
Attachment M	Encouraging Use of NY Businesses in Contract Performance Form
Attachment N	Sample Standard New York State Boilerplate Contract with Appendices
	<ul style="list-style-type: none"> i. Appendix A - Standard Clauses for All New York State Contracts ii. Appendix X - Modification Agreement Form iii. Appendix D - General Specifications iv. Appendix H - Federal Health Insurance Portability and Accountability Act (HIPPA) v. Appendix G - General Notices vi. Appendix M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures

Attachment A1: Comprehensive Monitoring Review Protocol

On-Site Review Activities

1. The Contractor conducts the on-site monitoring review at the provider site or municipality's main place of business. If an individual provider delivering only home and community services, the review may be conducted at a neutral site. All of the activities per the agenda will be completed. These include: entrance and exit interviews with the EI Official or Manager (municipality), or Agency Director (agency provider) or individual provider; staff interviews; review of children's records; observation of facility; and review of policy/procedure manuals/materials, personnel files, and fiscal documentation.

The Contractor completes the review using monitoring tools and enters monitoring findings into an EI monitoring data system.

2. The Contractor team is responsible for presenting general preliminary determinations of State regulatory deficiencies or areas needing improvement during the exit interview. Information presented during the exit interview should be compiled by the monitoring team before the exit interview. The monitoring team conducts the exit interview with provider/municipal staff, and presents the findings that may appear in the monitoring report. The monitoring team also explains next steps in the monitoring process and explains that a monitoring report will be issued and the need of a Corrective Action Plan developed.

Post Review Monitoring Protocol

Report Release

Within 30 calendar days of the last day of the monitoring review for each provider/municipality, the Contractor:

- completes drafts of all provider and municipal monitoring reports which identifies regulatory violations and areas that need improvement;
- sends any draft provider monitoring reports with serious health and safety findings, or other unusual practice findings to the Early Intervention Program, for review and approval before release.

Within 45 calendar days of the last day of the visit, the Contractor releases provider monitoring reports to the provider. At no time should monitoring reports be issued later than 90 days after the date of the on-site review.

The Contractor will exchange reports with the Department that contain draft report comments, questions, or statements for the Department to address and approve prior to release by the Contractor.

All draft and final reports will be contained in the Contractor's monitoring data system, which must be accessible to designated Early Intervention Program staff.

Upon release of provider monitoring reports, the Contractor is responsible for sending a copy of the report, with a Department-approved letter, to each municipality in contract with the provider.

Upon release of municipal monitoring reports, the Contractor is responsible for sending a copy of the report, with a Department-approved letter, to the regional office assigned to the municipality.

If the review determined no findings, the provider/municipality is informed that there are no findings; if they wish, they may provide comments that will become part of the record, and in 30 days from the date the monitoring report was sent to the provider, the report and any comments will be considered final

and may be subject to the Freedom of Information Law. A copy of this letter is sent to each municipality in contract with the provider (for provider reviews), or assigned regional office (for municipal reviews).

If a Corrective Action Plan (CAP) is required as a result of findings identified during the review, the report will contain Department-approved instructions for providers and municipalities to complete and return their CAP and any comments to the Contractor.

Copies of any letters exchanged with the provider or municipality are sent to the Department.

Contractor Receipt of Corrective Action Plans

1. When a monitoring report requires a CAP, the provider/municipality has 45 calendar days from receipt of the monitoring report to develop and submit a CAP to the Contractor.
2. The Contractor may grant a provider or municipality a 15-day extension, in writing, to submit a CAP for extenuating circumstances. The Contractor is responsible to track receipt and extensions of all provider and municipal CAPs and report this to the Department monthly.
3. The Contractor receives all provider and municipal CAPs. Using a standardized review tool approved by the Department, the Contractor screens CAPs received to ensure all essential components are included. If components are missing or do not meet the screening requirements, the Contractor immediately corresponds with the provider/municipality to request that they submit corrections or additions within 15 calendar days. The Contractor reports CAP screening data to the Department monthly.
4. If a provider or municipality fails to submit the required CAP to the Contractor, the Contractor will follow up, in writing, with the provider. The Contractor will direct submission of the CAP within ten calendar days or direct the provider/municipality to request an extension.
5. If the provider or municipality did not respond to the initial request for a CAP and the three follow up attempts by the Contractor, the Department sends a letter informing the provider/municipality that the Department may now take additional enforcement action.

Contractor Review/Approval of Corrective Action Plans

After a provider/municipal CAP passes the screen, the Contractor reviews the CAP, including all materials submitted with the CAP. If the materials are voluminous, the Department will work with the Contractor to determine which information may be considered extraneous and can be excluded from the CAP review. The Department is available for technical assistance to the Contractor staff during their CAP review process.

The Contractor is responsible for identifying any findings within the provider's current monitoring report that are a repeat of findings they received during their previous monitoring review. The Contractor reviews the previous CAP response and compares it to the current CAP response using a Department-approved review protocol, and will insert appropriate Department-approved language into the CAP response for that indicator.

The Contractor is responsible for reviewing the provider's proposed corrective actions for each indicator with a finding. Using a format and consistent language approved by the Department, the Contractor then develops a document with individualized responses to the provider's proposed corrective actions for each indicator.

1. Accepted corrective action

When the provider's proposed corrective actions for an indicator demonstrate a clear understanding of program requirements with steps that will result in effective correction and, for an agency provider the CAP recognizes that staff or contractors acting on behalf of the agency provider must be made aware of and carry out the new/revised policies and procedures, the Contractor will consider the CAP response for the indicator "accepted" and will insert appropriate Department-approved language into the CAP response for that indicator.

2. Accepted with Technical Assistance corrective action

When the provider's proposed corrective actions for an indicator demonstrate a basic understanding of program requirements, and/or the proposed corrective actions need only minor correction or additions to be considered accepted, the Contractor will consider the CAP response for the indicator "accepted with technical assistance" and will insert appropriate Department-approved language that provides technical assistance into the CAP response for that indicator. The technical assistance includes feedback to clarify program regulations, statute, or guidance and informational worksheets with criteria for those findings may be provided to assist the provider to revise their corrective action to include all relevant criteria.

3. Needs Correction corrective action

When the provider's proposed corrective actions for an indicator fail to demonstrate even a basic understanding of program requirements, and/or the proposed corrective actions need major correction or additions to be considered accepted, the Contractor will consider the CAP response for the indicator a "needs correction" and will insert appropriate Department-approved language into the CAP response for that indicator. The indicator language includes feedback to clarify program regulations, statute, or guidance and informational worksheets with criteria for those findings may be provided to assist the provider to revise their corrective action to include all relevant criteria. Resubmission is required for indicators that need correction.

Resubmitted CAPs are sent directly to the Department to be screened, tracked, and reviewed. Should a second CAP response result in another "needs correction" determination for one or more indicators, the Department will follow up and consider possible enforcement action.

If a provider submits substantive comments with their CAP regarding the monitoring process, or challenges the contractor's findings, the Contractor forwards copies of that documentation to the Department Early Intervention Program for technical assistance. This may result in the provider receiving a customized letter with their CAP response, acknowledging their observations of the monitoring process or accepting or disagreeing with their comments regarding the findings.

Within 45 days after a provider CAP is successfully screened by the Contractor and a draft CAP response sent to the Department to review and approve, the Department sends the final CAP response letter to the provider/municipality, with a cover letter from the Early Intervention Program which notifies the provider that the CAP is accepted in full; accepted with technical assistance, without need for a resubmission; or that one or more indicators need correction and additional corrective actions must be resubmitted for those indicators. When the letter indicates the CAP does not require resubmission (all indicators have been found to either be "accepted" or "accepted with TA"), the letter also informs the provider that the monitoring report, CAP and any comments received are considered final, public documents, which may be subject to the Freedom of Information Laws. The Department also sends copies of the CAP response and letter to municipalities in contract with the provider. The Contractor forwards the original provider CAP, copies of the draft CAP response, any provider comments, and CAP feedback from municipalities in contract with the provider to the Department.

Attachment A2: Comprehensive Monitoring Tool

Indicator	Report Statement	Reference	Protocol for Review
PI-2	The initial service coordinator promptly arranges a contact with the parent in a time, place and manner reasonably convenient for the parent and consistent with applicable timeliness requirements.	10NYCRR 69-4.7(b)	Child Record Review
PI-3	At the initial contact with the parent, the initial service coordinator ensures that the parent has a copy of "The Early Intervention Program: A Parent's Guide," reviews this guide with the parent, and documents this review in the child's record.	10NYCRR69-4.7(c) 10NYCRR 69-4.7(c)(1)	Child Record Review Parent Interview
PI-4	The initial service coordinator provides parents with information regarding rights and entitlements under the EIP and documents the information provided in the child's record.	10NYCRR 69-4.7(c)	Child Record Review
PI-5	The initial service coordinator assists the parent in identifying and applying for benefit programs for which the family may be eligible, including: Medical Assistance Program; Supplemental Social Security Income Program; Physically Handicapped Children's Program; Child Health Plus; and Social Security Disability Income.	10NYCRR 69-4.7(i)	Child Record Review Parent Interview
PI-6	The initial service coordinator (ISC) reviews all options for evaluations and screenings from the list of approved and contracted evaluators provided by the municipality. The ISC assists the family in selecting an evaluator or screener by providing objective information regarding all options including location, types of evaluations performed, and settings for evaluations.	10NYCRR 69-4.7(j)	Other Documentation Review Child Record Review Parent Interview
PI-7	The initial service coordinator provides parents with information regarding the funding of EIP services including services at no cost to parent, required use of Medicaid/third party insurance, and protections when Medicaid and/or third party insurance are used.	10NYCRR 69-4.7(g) 10NYCRR 69-4.7(g)(1)(2)(3)	Child Record Review Parent Interview
PI-9	The initial service coordinator discusses the IFSP process with the parent, provides required information, and documents the information provided in the child's record.	10NYCRR 69-4.7(o)(1-7)	Child Record Review
PI-10	The initial service coordinator discusses options for EI services with parents.	10NYCRR 69-4.7(p)(1) 10NYCRR 69-4.7 (o)(7)	Child Record Review Parent Interview
PI-11	The evaluator obtains written informed parental consent prior to the evaluation and/or screening.	10NYCRR 69-4.8(a)(1)(ii) 10NYCRR 69-4.8(a)(2)	Child Record Review
PI-13	The multidisciplinary evaluation team includes at least two qualified personnel from different disciplines with at least one specialist in the area of suspected delay or disability.	10NYCRR 69-4.8(a)(3)	Child Record Review
PI-14	The multidisciplinary evaluation and written reports are completed in sufficient time to convene the initial IFSP meeting within 45 days of the child's referral to the EIP.	10NYCRR 69-4.8(a)(9)(i)	Child Record Review
PI-15	The multidisciplinary evaluation includes an evaluation of the child's functioning in all five developmental domains using informed clinical opinion and age appropriate instruments and procedures.	10NYCRR 69-4.8(a)(4)(i) 10NYCRR 69-4.8(a)(6)	Child Record Review

Indicator	Report Statement	Reference	Protocol for Review
PI-16	The multidisciplinary evaluation includes a health assessment, including a physical examination, vision and hearing screening, and, where appropriate, a neurological assessment.	10NYCRR 69-4.8(a)(4)(i)(a)	Other Documentation Review Child Record Review
PI-19	The multidisciplinary evaluation report includes a statement of the child's eligibility based on regulatory criteria.	10NYCRR 69-4.8(a)(9)(iii)	Child Record Review
PI-20	The evaluation report and summary are written in accordance with EIP regulations.	10NYCRR 69-4.8(a)(9)(i) 10NYCRR 69-4.8(a)(9)(ii) 10NYCRR 69-4.8(a)(15) 10NYCRR 69.4.8(a)(4)(iv) 10NYCRR 69-4.8 (a)(9)(v)	Child Record Review
PI-21	The results of the evaluation are discussed with parents by the evaluator.	10NYCRR 69-4.8(a)(9)(iv)	Child Record Review Parent Interview
PI-22	The evaluation summary and, upon request, the report are sent to the parent, the initial service coordinator and the Early Intervention Official for review before the IFSP meeting. With parental consent, the report is sent to the primary health care provider.	10NYCRR 69-4.8(a)(9)(i)	Child Record Review
PI-25	The ongoing service coordinator coordinates and monitors the delivery of services.	10NYCRR 69-4.6(c)(1)(2)(3)(4) 10NYCRR 69-4.6(b)(3)(5)	Staff Interview Child Record Review Parent Interview
PI-27	The ongoing service coordinator facilitates the development of a transition plan.	10NYCRR 69-4.6(c)(7) 10NYCRR 69-4.20(b)(3) 10NYCRR 69-4.11(a)(10)(xiii)	Staff Interview Child Record Review Parent Interview
PI-29	The provider obtains prescriptions/orders for services as needed.	10NYCRR 69-4.11(a)(10)(ii) 10NYCRR 69-4.26(b)(8)	Child Record Review
PI-31	The provider delivers services that are family-centered.	10NYCRR 69-4.9(f)(1) 10NYCRR 69-69-4.9(g)(4)	Staff Interview Child Record Review Parent Interview
PI-32	The provider maintains original session/service coordination notes that include minimum content requirements.	10NYCRR 69-4.22(c) 10NYCRR 69-4.26(c) 10NYCRR 69-4.26(c)(iii) 10NYCRR 69-4.26(d)	Child Record Review
PI-33	The provider maintains the documentation required to fully disclose the extent of services.	Medicaid regulation 18NYCRR 541.1 10NYCRR 69-4.22(c) 10NYCRR 69-4.26(b)(5)(10)(13)	Child Record Review
PI-36A	Service coordinators assist parents and children to receive the rights, procedural safeguards and services that are authorized to be provided under State and federal law.	10NYCRR 69-4.6(a) 10NYCRR 69-4.6(c)(5)	Staff Interview Child Record Review Parent Interview

Indicator	Report Statement	Reference	Protocol for Review
PI-36B	Service coordinators assist parents and children to receive the rights, procedural safeguards and services that are authorized to be provided under State and federal law.	10NYCRR 69-4.6(a) 10NYCRR 69-4.6(c)(5)	Staff Interview Child Record Review Parent Interview
PI-38	The provider maintains documentation for each service billed.	10NYCRR 69-4.9(g)(6)(7) 10NYCRR 69-4.22(c) Title 10: Rules and Regulations 10NYCRR 69-4.30(b)(c)	Child Record Review
PI-39	Service coordinators bill for reimbursable activities according to EIP regulations.	Title 10: Rules and Regulations 10NYCRR 69-4.30(c)(3) 42 CFR 441.18(c) Early Intervention Program Memorandum 94-4, "Service Coordination"	Child Record Review
PI-41	The provider delivers services as authorized in the IFSP.	10NYCRR 69-4.9(g)(1) 10NYCRR 69-4.9(g)(2) 10NYCRR 69-4.9(g)(2)(i)(ii) 10NYCRR 69-4.9(g)(2)(ii)(a)	Child Record Review Parent Interview
PI-42B	All records containing personally identifiable information are maintained in secure locations and disposed of appropriately.	10NYCRR 69-4.17(c)	Staff Interview Observation Policy Review
PI-42C	All records containing personally identifiable information are maintained securely when stored off-site.	10NYCRR 69-4.17(c)	Staff Interview Other Documentation Review Policy Review
PI-42E	Confidentiality of electronic records that are stored on computer is maintained.	10NYCRR 69-4.17(c)	Policy Review
PI-42F	Confidentiality is maintained when e-mail is used.	10NYCRR 69-4.17(c)	Other Documentation Review Policy Review
PI-42G	Confidentiality of faxed information is maintained.	10NYCRR 69-4.17(c)	Policy Review
PI-42I	A record is kept of any individual, other than authorized individuals, who access a child's record, along with the date and purpose for which the record was accessed.	10NYCRR 69-4.17(c)	Other Documentation Review Policy Review
PI-42J	Parents are notified of the process that they must follow to inspect and review all records pertaining to their child.	10NYCRR 69-4.17(c)	Staff Interview Policy Review
PI-42K	Parental access to their child's record is ensured including review, and upon request an explanation and interpretation of material and copies of records.	10NYCRR 69-4.17(c)	Policy Review
PI-42M	The procedure to address amendment of their child's records, or to request a hearing, protects the parent's rights.	10NYCRR 69-4.17(c)	Staff Interview Policy Review
PI-42O	Written parental consent is obtained before any disclosure of personally identifiable information is disclosed to anyone other than authorized individuals.	10NYCRR 69-4.17(c)	Staff Interview Other Documentation Review Policy Review

Indicator	Report Statement	Reference	Protocol for Review
PI-42Q	Provider adheres to all legal requirements that protect records containing sensitive information.	10NYCRR 69-4.17(c)	Staff Interview Policy Review
PI-42T	Provider assures that all employees, independent contractors, consultants, and volunteers with access to personally identifiable information are informed of and are required to adhere to all confidentiality requirements related to this information.	10NYCRR 69-4.17(c)	Other Documentation Review Policy Review
PI-43	The provider maintains required documentation to demonstrate State approval status for services delivered.	10NYCRR 69-4.5(a) 10NYCRR 69-4.1(ak) 10NYCRR 69-4.5(f) 10NYCRR 69-4.5(h) 10NYCRR 69-4.5(a)(1)	Other Documentation Review
PI-44	Individual providers maintain documentation of current licensure, certification, or registration, as appropriate, and are qualified to deliver EIP services, including service coordination.	10NYCRR 69-4.1(ak)(1-22) 10NYCRR 69-4.9(d)(2) 10NYCRR 69-4.5(f) 10NYCRR 69-4.4(a)(1)(2)	Other Documentation Review
PI-45	Agency providers maintain documentation that their employees and contractors have current licensure, certification, or registration, as appropriate, and are qualified to deliver EIP services, including service coordination.	10NYCRR 69-4.1(ak)(1-22) 10NYCRR 69-4.9(d)(2) 10NYCRR 69-4.5(f) 10NYCRR 69-4.4(a)(1)(2)	Other Documentation Review Policy Review
PI-46	Agency providers maintain policies/procedures to screen employees and subcontracted individuals through the New York State Central Register of Child Abuse and Maltreatment (SCR), as appropriate.	10NYCRR 69-4.9(d)(1) NYS Social Services Law Section 424	Other Documentation Review Policy Review
PI-47	All providers have procedures in place to report suspected child abuse and maltreatment, including notification either directly to the SCR or to an appropriate authority.	10NYCRR 69-4.9(d)(1) NYS Social Services Law Section 413-415	Staff Interview Policy Review
PI-48	All providers have an annual health statement in place prior to providing EIP services.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(d)(3)(iv)	Staff Interview Other Documentation Review
PI-49	Universal precautions are utilized when EI services are being delivered.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(d)(3)(ii)(v)	Staff Interview Observation Policy Review
PI-50	Appropriate procedures are in place to address behavior, which is injurious to the child or others. Corporal punishment, abuse, and the use of aversive interventions in any form are prohibited when providing EIP services.	10NYCRR 69-4.9(i) 10NYCRR 69-4.9(d)(1)	Staff Interview Other Documentation Review Policy Review
PI-52	Providers have policies and procedures to address child and provider illness and emergencies.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(d)(3)(iv) 10NYCRR 69-4.9(e)(iii) 10NYCRR 69-4.9(g)(2)(i)	Staff Interview Other Documentation Review Observation Policy Review

Indicator	Report Statement	Reference	Protocol for Review
PI-53	The provider's equipment, materials, and/or toys are in good condition and free of lead.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(d)(3)(v)	Staff Interview Observation
PI-56	The provider maintains documentation of the facility's Certificate of Occupancy/Certificate of Compliance or other proof of building code compliance.	10NYCRR 69-4.9(e)	Other Documentation Review
PI-57	Electrical outlets in areas where EI services are delivered are inaccessible to children and have outlet covers.	10NYCRR 69-4.9(d)(3)(vi) 10NYCRR 69-4.9(e)	Observation
PI-58	Plaster and paint are not peeling, chipping, friable, or damaged in areas where EI services are delivered.	10NYCRR 69-4.9(d)(3)(vi) 10NYCRR 69-4.9(e)	Observation
PI-59	Hallways and/or exits are not obstructed and are free from clutter. Stairs are lighted.	10NYCRR 69-4.9(d)(3)(vi) 10NYCRR 69-4.9(e)	Observation
PI-60	Child access to building hazards is restricted.	10NYCRR 69-4.9(d)(3)(i) 10NYCRR 69-4.9(e)(iv)	Staff Interview Observation
PI-61	Playground equipment that is used in the provision of EI services to children is in good condition.	10NYCRR 69-4.9(d)(3)(v) 10NYCRR 69-4.9(e)(iv)	Observation
PI-63	The provider maintains documentation of a satisfactory fire inspection report issued within the last three years.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(e) 19 NYCRR Part 1203: Uniform Code Enforcement and Administration	Other Documentation Review Policy Review
PI-66	The provider conducts evacuation drills and implements emergency evacuation plans as required.	10NYCRR 69-4.9(e)	Staff Interview Other Documentation Review Policy Review Observation
PI-67	Toxic and flammable materials are stored away from heat sources and food, and/or are locked up.	10NYCRR 69-4.9(d)(3)(vi) 10NYCRR 69-4.9(e)	Observation
PI-68	Portable heaters are not used during the time that EI services are provided.	10NYCRR 69-4.9(d)(3)(vi) 10NYCRR 69-4.9(e)	Staff Interview Observation
PI-69	EI service areas have entrances and exits that prevent children from wandering out of the immediate area. All windows have locking devices, window guards, or other barriers to prevent children from accidental egress.	10NYCRR 69-4.9(d)(3)(vi) 10NYCRR 69-4.9(e)	Observation
PI-70	Children are supervised at all times.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(d)(3)(i)	Staff Interview Observation
PI-73	Prescription and over-the-counter medications are stored and administered in a safe manner in accordance with law and applicable State standards.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(e)(ii)	Staff Interview Other Documentation Review Observation
PI-75	Emergency parent contact information is readily available.	10NYCRR 69-4.9(e)(iii) 10NYCRR 69-4.9(g)(2)(i)	Staff Interview Other Documentation Review

Indicator	Report Statement	Reference	Protocol for Review
PI-76	Emergency consents for children are current and readily available.	10NYCRR 69-4.9(e)(iii)	Other Documentation Review
PI-78	Providers ensure that any child with a food or other allergy has a plan in place.	10NYCRR 69-4.9(e)(ii)(iii)	Staff Interview Other Documentation Review Observation
PI-80	Providers protect the general health and safety of children with respect to illness, injury, and emergencies while receiving EI services in a community setting.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(d)(3)(iv)(vi) 10NYCRR 69-4.9(g)(2)(i)	Staff Interview Other Documentation Review
PI-81	The provider has procedures in place to address unsafe conditions encountered in the home environment.	10NYCRR 69-4.9(d)(1) 10NYCRR 69-4.9(d)(3)(iv)(vi)	Policy Review Staff Interview

Attachment B: Investigative Monitoring Review Tool

Task	Investigative Protocols	Form to use	Notes
Task Assignments to staff (TBD)	<ul style="list-style-type: none"> ▪ Entrance Interview – Assist agency with List of Items to be Made Available. ▪ Child Record Reviews –IFSPs, MDEs, professional session notes, intake referral info from the county. ▪ Billing records. ▪ Staff interviews: professional staff and Agency Director. ▪ Personnel records: Includes any monetary incentives and contract. ▪ Exit Interview. 		
Entrance Interview	<ul style="list-style-type: none"> ▪ Introductions. ▪ Reason for monitoring review. ▪ Agenda for the day: ▪ Interviews with selected staff. ▪ Review of child records. Determine if records are complete. ▪ Exit Interview. 	List of items needed, including: <ul style="list-style-type: none"> ▪ Staff to be interviewed ▪ Specific child records ▪ Request for staff list to be completed 	Records for children who have aged out may be archived or in storage.
Assess Indicators for child record review, staff interview, other documentation, written policy as indicated.	PI-6: initial service coordinator (ISC) reviews all options for evaluations and screenings from the list of approved and contracted evaluators provided by the municipality.- get list PI-12: evaluator reviewed pertinent records related to the child's current health status and medical history as part of the multidisciplinary evaluation. PI-15: multidisciplinary evaluation included an evaluation of the child's functioning in all five developmental domains using informed clinical opinion and age appropriate instruments and procedures. PI-16: The evaluation included a health assessment, including a physical examination, vision and hearing screening, and where appropriate, a neurological assessment. PI-17: The multidisciplinary evaluation included a parent interview about family resources, priorities and concerns. PI-19: The evaluation report included a statement of the child's eligibility, based on regulatory criteria. PI-20: The evaluation report and summary were written in accordance with Early Intervention Program regulation. PI-21: The results of the evaluation were discussed with parents by the evaluator.		

Task	Investigative Protocols	Form to use	Notes
	PI-25: The ongoing service coordinator coordinated and monitored delivery of services. PI-31: The provider delivered services that were family-centered and used an individualized approach. PI-32: Provider maintained original session/service coordination notes that included minimum content requirements. PI-33: The provider maintained the documentation required to fully disclose the extent of services delivered. PI-37: The provider maintained copies of billing forms/documents necessary to substantiate billings for all EI services. PI-38: Provider maintained documentation for each service billed. PI-40: Provider's billing form contains required information according to Early Intervention Program regulations. PI-41: The provider delivered services as authorized in the IFSP.		
Assess specific child records for substantiation of specific allegations.	Customized based on allegations.		
Staff Interviews	Separate Interview Tools for professional staff, parents and Director, customized based on allegations.		
Review of Personnel Records	<ul style="list-style-type: none"> ▪ Review credentials and approvals for all staff. ▪ Determine if "bonus" incentives or quid pro quo arrangements are offered. ▪ Supervisory plans. 		
Exit Interview	Determine next steps and inform provider.		

Attachment C: **EI Verification of Correction Review Protocol**

PRE-REVIEW

- The Verification Review (VR) must be completed within one year from when the provider received an identified finding in a previous review.
- Contractor will contact the providers to coordinate the review at least three weeks prior to the date of the review.
- Contractor will ensure the providers will have the child records for all children on the child sample based on criteria determined by the Department, and a list of additional children whose records can be pulled randomly, if needed.

ON-SITE REVIEW

Selecting child records:

- Contractor will select child records according to a specified time frame when activity occurred, as instructed by the Department.

Using the VR Tool

- Contractor will assess the review indicators listed in the review for verification review tool.
- Contractor will only assess the specific criteria that was incorrect during the previous review for each provider.
- Contractor will determine if records are verified as corrected as follows:
 - V (Verified) – no comment needed
 - NV (Not Verified) – comment needed
 - NA (Not applicable) – comment needed

Clarifying VR assessment when ‘verified’ or ‘not verified’ is questionable

- Contractor will defer to the Department for a final determination in situations where the review results are questionable.
- Contractor will provide comments to the Department based upon what the reviewers observed at the review.
- Contractor will write a comment on the tool that includes but is not limited to the following:
 - Is there a clear pattern of correction in the later records reviewed?
 - Is the process (through child records, staff interview and written policy if available) adequate so that future records would show verification?
 - Do the records that show verification indicate a change in practice by the provider from those that did not show verification?

POST- REVIEW

Contractor will compile results of the verification review and submit verification review reports to the Department.

Attachment D: Approved and Contracted Providers

Provider type	Service type	Agreement/Pending Agreement
Agency	Evaluations, service coordination, and general services	630
Agency	Evaluations and service coordination	10
Agency	Evaluations and general services	125
Agency	Evaluations only	8
Agency	Service coordination and general services	260
Agency	Service coordination only	56
Agency	General services only	465
Individual	Evaluations, service coordination, and general services	5
Individual	Evaluations and service coordination	0
Individual	Evaluations and general services	34
Individual	Evaluations only	0
Individual	Service coordination and general services	37264
Individual	Service coordination only	92
Individual	General services only	1478

Provider Approval data as of July 3, 2014

Attachment E: Sample Monitoring Report

Provider:

Review Type: Comprehensive

Licensure or Certification:

Provider Discipline:

Applicable County Contracts: Not Applicable

Approved to Deliver: Evaluation: Supplemental
Service Provision Including:
Home and Community-based Individual Collateral Visits

Facility-based EI: No

Areas Reviewed: Child Find
General Supervision
Evaluation
Service Provision

of Children Currently Served: 10

Reported Languages: Spanish

Date(s) of Monitoring:

Monitoring Team:

Municipality Representative in Attendance: Not Applicable

Provider's Address:

Site Reviewed: Not Applicable

Approved Site(s): Not Applicable

Introduction

Pursuant to New York State Public Health Law (PHL) §2550, the New York State Department of Health (Department) is charged with the administration and oversight of New York State's Early Intervention Program (EIP) and for ensuring that EIP services are delivered in accordance with State and federal laws and regulations. As lead agency, the Department is required under State and federal law and regulation to monitor all providers of EIP services. The Department has a contract with IPRO to conduct these monitoring reviews.

The primary focus of monitoring reviews completed by IPRO, as the Department's agent, is to monitor for compliance with PHL (Title II of Article 25), regulations (10 New York Codes, Rules, and Regulations), and Department guidance governing the EIP.

Procedures for Early Intervention Monitoring

Standardized protocols and review tools have been developed by the Department and are used by IPRO monitoring teams to complete monitoring reviews for the EIP. The review tools include a comprehensive set of indicators designed to determine the extent to which the provider's policies and procedures, and implementation of these policies and procedures adhere to PHL, regulations, and Department guidance. The IPRO teams are comprised of individuals with expertise in early intervention and administration.

A self-assessment tool is mailed to providers in advance of the review. The purpose of the self-assessment is to give providers an opportunity to conduct a review of their policies/procedures, child records, and other documentation prior to the on-site review, using the same indicators on which they will be monitored.

IPRO teams review information supplied by the Department, when applicable (e.g., findings from previous systems complaint investigations, monitoring reviews, and corrective action plans) to help focus review activities.

Monitoring review activities include:

- Interviews with providers or agency staff. The purpose of the interview is to inform the provider of the activities that will occur during the monitoring review; to obtain information about policies and procedures the provider has in place for the provision of EIP services; and to explain the preliminary findings of the monitoring review to the provider.
- Child record review. The purpose of the child record review is to gather data regarding the provision of EIP services by the provider to ensure that services are delivered in accordance with PHL, regulations, and Department guidance.
- Review of policy, personnel records, other documentation, and information obtained from direct observation. The purpose of this review is to gather data to ensure that providers or agency staff providing EIP services is qualified, confidentiality of families is maintained, and early intervention services are delivered in a manner which protects the health and safety of children, in accordance with PHL, regulations, and Department guidance.

- Interviews with parents of children receiving EIP services. The purpose of this review is to ensure that services are delivered in accordance with PHL, regulations, and Department guidance with respect to the role of the family in early intervention service delivery.

Priority Areas

The responsibilities of providers of EIP services are organized into priority areas consistent with those required as part of states' implementation of the Part C Early Intervention Program under the Individuals with Disabilities Education Act (IDEA). Each priority area is comprised of a set of indicators from the review tool that are related to EIP components. The priority areas are as follows:

Child Find

The monitoring indicators that are reviewed in this priority area include provisions related to child find, initial service coordination, and multidisciplinary evaluation. Based on information gathered through the review process, determinations are made regarding the practices used by the provider in: acting as a primary referral source to the EIP, providing parents with required information regarding the EIP, facilitating and performing multidisciplinary evaluations, and determining eligibility for the EIP.

Services in Natural Environments

The monitoring indicators that are reviewed in this priority area include provisions related to ongoing service coordination, service provision, and settings for the delivery of services. Based on information gathered through the review process, determinations are made regarding the practices used by the provider in: facilitating the development of Individualized Family Services Plans (IFSPs), delivering services that are timely and in accordance with IFSPs, delivering services in natural environments (to the extent such settings are appropriate), resolving barriers to service delivery, and providing services that are individualized and family-centered.

Transition

The monitoring indicators that are reviewed in this priority area include provisions related to ongoing service coordination and the transition of children from the EIP to preschool special education and/or other programs and services. Based on information gathered through the review process, determinations are made regarding the practices used by the provider in: ensuring that transition plans are developed with families and included in IFSPs, that transition steps are timely and complete, and that referrals to appropriate programs are made.

General Supervision

The monitoring indicators that are reviewed in this priority area include provisions related to the general administrative oversight of EIP service delivery. Based on information gathered through the review process, determinations are made regarding the practices used by the provider in: protecting the confidentiality of personally identifiable information, adequately

documenting service delivery, assisting parents to access procedural safeguards, maintaining appropriate fiscal documentation and billing/claiming procedures, and delivering services in a manner that protects the health and safety of children, families, and providers in the EIP.

Presentation of Review Results

This report presents the results of the monitoring review of the provider of EIP services. The report delineates the areas of compliance and non-compliance with PHL, regulations, and Department guidance as determined by the comprehensive set of indicators which comprise this review process.

The review process uses a sampling methodology. Determinations are based on the materials that were examined and the information that was obtained from the parents, provider and/or agency staff during the review.

Areas of compliance and non-compliance are presented in the form of exhibit pages as follows:

- Exhibit A is a summary table which describes the number of indicators across all priority areas that were found to be in compliance with PHL, regulations, and Department guidance.
- Exhibit B presents, by indicator, areas of regulatory non-compliance. Development of a Corrective Action Plan (CAP) is necessary for these indicators. Submission of Required Evidence of Correction (REC) will be necessary for select indicators which relate to requirements of IDEA and federal regulation.
- Exhibit C presents, by indicator, opportunities for improvement. These are areas where monitoring results determined that compliance was generally practiced for a regulatory indicator, but improvement is suggested to ensure ongoing or complete compliance; or where monitoring results determined that practices were in need of improvement for a non-regulatory indicator. Although providers are expected to make improvements in these areas, which may be reviewed during subsequent on-site monitoring visits, submission of a CAP and REC will NOT be required for Exhibit C.

Indicators in Exhibit B and Exhibit C are identified by indicator number, priority area, textual description, regulatory citation, and by specific information regarding the nature of the non-compliance. The exhibits also provide technical assistance which can be used in the development of a CAP.

Correction of Non-Compliance

If monitoring results for this review determined non-compliance with PHL, regulations, and Department guidance in one or more areas, as identified by Exhibit B, each finding of non-compliance must be corrected within a year of the date this report is received. A CAP must be developed and submitted to address each finding of non-compliance which identifies the steps that will be taken to correct the non-compliance. A REC must be submitted for select findings related to IDEA requirements to provide verification that the CAP has been implemented and the non-compliance successfully corrected.

The CAP must be submitted within forty-five (45) calendar days from receipt of this monitoring report.

REC consisting of written policy and/or other documentation such as contract language, guidance memos, letters, forms, etc. must be submitted with the CAP.

REC consisting of documentation from child records must be submitted within one hundred (100) calendar days following the acceptance of the CAP by the Department.

All CAP submissions must be addressed to:

<Contact Name>

<Contact title><Contract organization name and address>

Detailed instructions for the development and submission of the CAP and REC (including identification of the findings requiring a REC) are found in the accompanying Attachment(s).

Additional Comments:

No additional comments.

Exhibit A I
Monitoring Indicators That Met Early Intervention Program Standards

Federal Early Intervention Priority Area	Report Statement	Indicators that Met Monitoring Criteria
Child Find	Based on review of policies and practices, interviews conducted with personnel, review of individual child records, and/or review of other documentation, it was determined that the enhanced provider has maintained compliance, to the extent indicated in the next column, with New York State Early Intervention Program regulations in regard to administrative activities related to child find.	1 of 1 indicators assessed in this cluster met the standard.
General Supervision	Based on review of policies and practices, interviews conducted with personnel, review of individual child records, and/or review of other documentation, it was determined that the enhanced provider has maintained compliance, to the extent indicated in the next column, with New York State Early Intervention Program regulations in regard to activities related to general supervision and oversight.	9 of 13 indicators assessed in this cluster met the standard.
Services in Natural Environments	Based on review of policies and practices, interviews conducted with personnel, review of individual child records, and/or review of other documentation, it was determined that the enhanced provider has maintained compliance, to the extent indicated in the next column, with New York State Early Intervention Program regulations in regard to administrative activities related to services in natural environments.	2 of 2 indicators assessed in this cluster met the standard.
Transition	Based on review of policies and practices, interviews conducted with personnel, review of individual child records, and/or review of other documentation, it was determined that the enhanced provider has maintained compliance, to the extent indicated in the next column, with New York State Early Intervention Program regulations in regard to administrative activities related to transition.	0 of 0 indicators assessed in this cluster met the standard.

Exhibit B
Monitoring Indicator That Did Not Meet Early Intervention Program Standards

Indicator, Priority Area and Reference

Provider Indicator 42: Requirements of Title 34 of the Code of Federal Regulations and other applicable legal requirements for confidentiality are followed.

Federal Priority Area: General Supervision

Reference: EIP regulation 10NYCRR 69-4.17(c) states that "(1) Personally identifiable data, information, or records pertaining to an eligible child shall not be disclosed by any officer or employee of the Department of Health, state early intervention service agencies, municipalities, evaluators, service providers or service coordinators, to any person other than the parent of such child, except in accordance with Title 34 of the Code of Federal Rules Part 99, sections 300.560 through 300.576 ...to preserve the confidentiality of records pertaining to children participating in the early intervention program ...(3) Early intervention officials, all providers approved to deliver early intervention services ...shall: (i) implement and maintain policies and procedures to assure the protection of confidential personally identifiable information ...; (ii) submit assurances that all employees ...independent contractors, consultants, and volunteers with access to personally identifiable information are informed of and are required to adhere to all confidentiality requirements ...(iii) ...protect records containing sensitive information (e.g. such as sexual or physical abuse, treatment for mental illness ...HIV status, ...etc.); and (iv) identify the person or person(s) with designated responsibility for guaranteeing the confidentiality of personally identifiable information. (4) Early intervention officials shall ensure the confidentiality of all information maintained in an electronic format except as required or permitted by state or federal law." Additionally, EIP regulation 10NYCRR 69-4.17(d) states that "(1) ... the parent is afforded the opportunity to review and inspect all the records pertaining to the child and ...family ...used for the purposes of the Early Intervention Program, unless the parent is otherwise prohibited such access ...The opportunity to review and inspect ...includes the right to (i) understandable explanations about ...the record ...(ii) obtain a copy of the record within ten working days ...(iii) obtain a copy ...within five working days if the request is made as part of a mediation or impartial hearing, (iv) have a representative of the parent view the record ... 6) Where any part of the record contains information on more than one child, the parent shall only have the opportunity to review and inspect the portion of the record which pertains to their child." Moreover, "(4) The early intervention official, or evaluator, service provider or service coordinator may charge a reasonable fee not to exceed 10 cents per page for the first copy and 25 cents per page for any additional copies... provided that the fee does not prevent the parent from exercising the right to inspect and review records and providing that no fees shall be charged to parents to obtain copies of any evaluations or assessment documents to which parents are specifically entitled" nor shall parents be "(5) charged fees for the search and retrieval of the record." The "(7) ... early intervention official, evaluator, service provider and service coordinator shall keep a record of parties obtaining access to records gathered, maintained, or used for purposes of the Early Intervention Program (except access by parents and authorized employees of the municipality or approved evaluator, service provider, or service coordinator) including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records." Additionally, EIP

regulation 10NYCRR 69-4.17(e) states "(1) The early intervention official, evaluator, service provider and service coordinator shall ensure the parent the right to present objections and request amendments to the contents of the record because the parent believes the information is inaccurate, misleading, or violates the privacy or other rights of the child

(3)(i) If the early intervention official, evaluator, service provider or service coordinator concurs with the parent's request, the service coordinator shall ensure the contents of the record are amended and notify the parent of the amendment in writing ... (ii) If the early intervention official, evaluator, service provider or service coordinator does not concur with the parent's request to amend the record, the early intervention official shall notify the parent in writing of the decision and inform the parent of the right to an administrative hearing."

All or some of the following review processes were used to assess this indicator:

- Interviews conducted with provider/agency staff.
- Interviews conducted with parents.
- Review of individual child records.
- Review of other documentation including training materials, contracts, memos, personnel files, data system records, etc.
- Direct observation.
- Review of written policy.

Review Results

Regulation Finding

The following review process (es) indicated that the provider was not in compliance with PHL, regulations, and Department guidance:

- The provider's written policy did not contain all of the requirements of Title 34 of the Federal Regulations and other applicable legal requirements for confidentiality. Specifically, the provider's written policy did not state that:
 - PI-42G: Confidentiality of faxed information is maintained through the use of a fax cover sheet that includes a confidentiality statement.
 - PI-42G: Confidentiality of faxed information is maintained by ensuring that fax recipients maintain a secure site, where faxed information is not accessible to unauthorized personnel or the general public.
 - PI-42K: Parental access to their child's record includes the right to receive a copy of all material contained in this record.
 - PI-42K: Parental access to their child's record includes an explanation and interpretation of all material included in this record.
 - PI-42K: Upon parental request, a copy of their child's record must be provided to parents within 10 working days of the request. If the request is made as part of mediation or an impartial hearing, a copy must be provided within 5 days.
 - PI-42M: The Early Intervention Official is notified if the provider disagrees with a parental request to have their child's record amended.
 - PI-42M: If the provider agrees to a parental request to amend their child's record, the provider amends the information and informs the family's service coordinator.

The service coordinator ensures the contents of the record are amended and notifies the parent of the amendment in writing.

The provider is required to develop, and submit for approval, a CAP which addresses the issues cited above and ensures compliance with PHL, regulations, and Department guidance.

Providers of EIP services must follow all requirements of Title 34 of the Code of Federal Regulations (CFR) and other applicable legal requirements for confidentiality. Each provider of evaluations, services, and service coordination shall adopt policies and procedures to preserve the confidentiality of personally identifiable information pertaining to children and families participating in the EIP. A comprehensive written confidentiality policy must be developed and maintained by all providers who deliver EIP services. Early intervention clinical records are considered educational and are governed by the Federal Educational Rights and Privacy Act (FERPA), Article 25 of the NYS PHL and the corresponding federal and State regulations. The

Health Insurance Portability and Accountability Act (HIPAA) governs medical, not educational, records and applies only to early intervention billing records. Early Intervention providers who are licensed, registered, or certified under New York State Education Law must also maintain their records in accordance with the laws and regulations that apply to their profession. The following components of FERPA and Title 34 CFR must be applied to the provider's practice, and can assist in the development of correct and complete written confidentiality policies appropriate for EIP service delivery.

PJ-42A: An individual responsible for ensuring the confidentiality of personally identifiable information in records, including electronic records, must be designated. This person must have appropriate authority within the agency.

PIA28: Storage of child/family records must be secure. All records containing personally identifiable information must be maintained in secure locations, such as a file or room that can be locked when unattended. Records must be disposed of using an appropriate method such as shredding.

PI-42C: Off-site storage of child/family records must be secure. Records stored off-site that contain personally identifiable information must be maintained in secure locations, such as a file, room, or storage unit that is locked. The method of retrieving these files must also maintain the confidentiality of these records. Records must be disposed of using an appropriate method such as shredding. When a professional records management company is used for off-site storage of records containing personally identifiable information, confidentiality requirements must be followed by this company during the storage, retrieval, and disposal of records. The provider's contract with this company must meet all confidentiality requirements of FERPA and Title 34 CFR applicable to child/family records within the EIP.

PI-42D: Records containing personally identifiable information are secured by the provider when transported and kept locked when not with the provider.

PI-42E: Confidentiality of electronic records that are stored on computer must be maintained. Internal controls must be in place when information is stored on computers that limit access to authorized staff within an agency or to the individual provider. This includes, but is not limited to, password protection and secure storage of discs, CD's, DVD's and/or other removable storage devices. In addition, an unattended computer should lock automatically

after a period of inactivity, requiring a password to be re-entered to permit access to the workstation.

PI-42F: Confidentiality must be maintained when e-mail is used. Due to the potential for breach of confidentiality, child specific identifiable information may not be transmitted via e-mail unless rigorous administrative, technical and physical safeguards are in place including, but not limited to, password protection, firewall software, and encryption. In addition, an unattended computer should lock automatically after a period of inactivity, requiring a password to be re-entered to permit access to the workstation. All parties involved in the sending and receipt of an electronic record must be able to maintain the confidentiality of that record. Child specific identifiable information includes a list of personal characteristics or other information that would make it possible to identify the child, the parent or other family members with reasonable certainty. In addition to obvious identifiers such as name, address, etc., the combination of facts presented in the e-mail (e.g., initials, family composition, unique diagnosis, heritage, neighborhood, etc.) should not be able to identify a particular family or child.

PI-42G: Confidentiality of faxed information must be maintained. Safeguarding of faxed information requires, but is not limited to, the use of a fax cover sheet that includes a confidentiality statement. The provider must also ensure that the fax recipient maintains a secure site where faxed information would not be accessible to unauthorized personnel or to the general public.

PI-42H: Agencies must identify those individuals within their agency who are authorized to routinely access a child's record. Each agency must maintain a current listing of the names and titles/positions of those employees who may have routine access to personally identifiable information. Only individuals who collect or use information for the purpose of facilitating the child's/family's participation in the EIP should be given this authorization.

PI-4 21: A record must be kept of all individuals, other than authorized individuals, who access a child's record, including the date of access and the purpose for which the record was accessed. When this access log contains multiple child names, there is a method for maintaining the confidentiality of each child/family.

PI-4 2J: Parents must be notified of the process that they must follow to inspect and review all records pertaining to their child. This notification should include a description of the process including how parents would make the request, who they must speak to, and other details. The provider's written policy must describe this process. If a parent is unable to submit a request to review records in writing, a verbal request should be accepted.

PI-42K: Parental access to their child's record must be ensured. Access to records includes: a review of the record by the parent or a representative on behalf of the parent unless such access is prohibited under State or federal law; an explanation and interpretation of material included in any EI record upon request; and a copy of any record within 10 working days of the request (if the request is made as part of mediation or an impartial hearing, a copy must be provided within 5 days.)

PI-42L: Fees for copying and retrieving records must not exceed allowable rates. A fee not to exceed 10 cents per page for the first copy and 25 cents per page for additional copies may be charged to the parent to copy EI records unless the fee prevents the parent from inspecting and reviewing the record. No fee may be charged for records related to evaluations and assessments or for the search and retrieval of records. An evaluator or service provider licensed by NYSED may charge for copies as permitted under PHL §18.

PI-42M: The procedure to address amendment of their child's records must protect the parent's rights. The parent has the right to request an amendment to their child's record when

the parent believes the information contained in the record is inaccurate, misleading, or violates the privacy or other rights of their child. If the provider decides not to amend the record as requested, the provider informs the Early Intervention Official (EIO) of this decision. The EIO is responsible for informing the parent in writing of the provider's decision not to amend the record and that the parent has the right to a hearing. The hearing will be conducted by an individual designated by the municipality who does not have a direct interest in the outcome of the hearing. If information in the record is found to be inaccurate, misleading, or to violate the privacy of the child/family, the provider will amend the information and will inform the family's service coordinator. The service coordinator ensures the contents of the record are amended and notifies the parent of the amendment in writing.

PI-42N: When records contain information about more than one child, information about other children receiving services must be protected. Only information pertaining to the child/family who is the subject of a request for record access or disclosure may be released.

PI-42O: Written parental consent must be obtained before personally identifiable information is disclosed to anyone other than authorized individuals. Written parental consent for release of or obtaining information must include the names of both entities involved in the releasing and obtaining of information; which records will be obtained or released; the specific record(s) to be used and the purpose of such use; the date the parent signed the consent; and the parent's signature and relationship to the child. Only information appropriate to a request should be released.

PI-42P: Individuals engaged in record review for quality assurance (or other purposes such as fiscal audit, etc.) who are not involved in the direct provision of EIP services must be informed about, and required to adhere to, all confidentiality requirements applicable to personally identifiable information within the EIP. They must also comply with all legal requirements that protect records containing sensitive information (such as sexual or physical abuse, treatment for mental illness or mental health problems, HIV status, communicable disease status, the child's parentage, etc.).

PI-42Q: The provider must adhere to the confidentiality requirements of the EIP, including all legal requirements that protect records containing sensitive information (such as sexual or physical abuse, treatment for mental illness or mental health problems, HIV status, communicable disease status, the child's parentage, etc.). When consent is given by a parent or guardian to release information, only information appropriate to a request should be released. Sensitive information about the child and family must be protected.

PI-42R: At a minimum, records must be retained for a period of six years from the last date that care, services or supplies were provided or billed, whichever is later. Providers who are licensed, registered, or certified under State Education Law must retain records in accordance with the law and regulations that apply to their profession.

PI-42S: When electronic signatures are used, electronic documentation must be maintained in a manner that demonstrates the provider's right to receive payment under the Medicaid program and ensures the confidentiality of child and family information. Records must meet the general and specific requirements of the regulation as to content. It must be possible to determine when the record was created. There must be a process to document alteration of the record and also a process to prevent alteration (i.e., protected Microsoft Office document or secured PDF in 'read-only' format). The direct provider of service must be identified in the record. The provider must be able to produce a sample record for review, which complies with all requirements.

PI-42T: Agency providers must ensure that all employees, independent contractors, consultants, and volunteers with access to personally identifiable information are informed

about, and required to adhere to, all confidentiality requirements applicable to personally identifiable information within the EIP. Agencies must also assure knowledge of and compliance with all legal requirements that protect records containing sensitive information (such as sexual or physical abuse, treatment for mental illness or mental health problems, HIV status, communicable disease status, the child's parentage, etc.). Individual providers must keep informed of all applicable confidentiality requirements as described above.

For additional information on maintaining the confidentiality of early intervention records, please refer to: Early Intervention Program Memorandum 03-1, "Guidance on Early Intervention Program Records," and Early Intervention Guidance Letter, October 2009, "Dear Colleague Letter - Clarification to Early Intervention Providers on Parental Consent to Use E-mail to Exchange Personally Identifiable Information."

Exhibit B
Monitoring Indicator That Did Not Meet Early Intervention Program Standards

Indicator, Priority Area and Reference

Provider Indicator 50: Appropriate procedures are in place to address behavior which is injurious to the child or others. Corporal punishment, abuse, and the use of aversive interventions in any form are prohibited when providing EIP services.

Federal Priority Area: General Supervision

Reference: EIP regulation 10NYCRR 69-4.9(i) states that "The use of aversive intervention in any form is strictly prohibited when providing early intervention program services to an eligible child. For purposes of this section, aversive intervention means an intervention that is intended to induce pain or discomfort to a child for the purpose of modifying or changing a child's behavior or eliminating or reducing maladaptive behaviors, including but not limited to the following: (1) contingent application of noxious, painful, intrusive stimuli or activities; (2) any form of noxious, painful, or intrusive spray (including water or other mists), inhalant, or tastes; (3) contingent food programs that include the denial or delay of the provision of meals or intentionally altering staple food or drink to make it distasteful; (4) movement limitation used as punishment, including but not limited to helmets and mechanical restraint devices; (5) physical restraints; (6) blindfolds; and, (7) white noise helmets and electric shock. (8) Aversives do not include such interventions as voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; positive reinforcers such as small amounts of food used as a reward for successful completion of a clinical task or token fines as part of a token economy system; brief physical prompts to interrupt or prevent a specific behavior; or interventions prescribed by a physician for the treatment or protection of the child. (9) Nothing in this subsection shall preclude the use of behavior management techniques to prevent a child who is undergoing episodic behavioral or emotional disturbance from seriously injuring him/herself or others. Emergency physical interventions may be used to prevent a child from seriously injuring him/herself or others. Such interventions, which shall not include mechanical restraints, shall be used only in situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed to prevent or minimize injury and shall only be used for as long as the duration of the incident. Emergency physical interventions shall not be used as a punishment or as a substitute for systematic behavioral interventions that are designed to change, replace, modify or eliminate a targeted behavior. Staff who may be called upon to implement emergency physical interventions shall be provided with appropriate training in safe and effective physical restraint procedures. Emergency physical interventions shall be included in a behavior management plan that is developed by qualified personnel with appropriate expertise and documented in the child's record to address persistent, ongoing behavior which is injurious to the child or others. (i) The behavior management plan shall be in writing and signed by the parent. (ii) The plan shall be developed in concert with the child's family and providers of early intervention services and with parent consent and other clinical experts as needed; (iii) The child shall be at significant physical risk (injury, malnutrition, or other physical harm). (iv) A medical evaluation shall be conducted to address medical conditions. (v) The plan shall be a result of a thorough assessment of cause or behavioral functions. (vi) The plan shall include positive strategies to reduce or prevent the occurrence of the behavior including building replacement behaviors,

when planned physical restraint is involved; (vii) The plan shall be based on positive reinforcement approaches, where contingent food programs are involved. The plan shall be implemented by appropriately trained individuals. (ix) The parent shall have the right to revoke approval of the plan at any time, and request that a new behavior management plan be developed in accordance with the requirements of this subsection." Additionally, EIP regulation 10NYCRR 69 -4.9 (d)(1) states that "All early intervention providers shall ensure that early intervention program services are delivered in a manner that protects the health and safety of eligible children. Early intervention providers shall: (1) comply with standards for health, safety, and sanitation issued by the Department for the early intervention program, and for early intervention providers who are otherwise required to be approved by another state agency to deliver health or human services, complying with health, safety and sanitation standards issued by such other agency."

All or some of the following review processes were used to assess this indicator:

- Interviews conducted with provider/agency staff.
- Interviews conducted with parents.
- Review of individual child records.
- Review of other documentation including training materials, contracts, memos, personnel files, data system records, etc.
- Direct observation.
- Review of written policy.

Review Results

Regulation Finding

The following review process(es) indicated that the provider was not in compliance with PHL, regulations, and Department guidance:

- Written policy did not describe that corporal punishment, emotional or physical abuse or maltreatment, and the use of aversive interventions in any form are strictly prohibited when providing EIP services.

The provider is required to develop, and submit for approval, a CAP which addresses the issues cited above and ensures compliance with PHL, regulations, and Department guidance.

Providers of EIP services must ensure that only appropriate strategies are used when a child exhibits self-injurious or aggressive behavior that threatens the well-being of the child or others. Corporal punishment, emotional or physical abuse or maltreatment, and the use of aversive intervention in any form are strictly prohibited when providing EIP services. Aversive intervention means an intervention that is intended to induce pain or discomfort to a child for the purpose of modifying or changing a child's behavior or eliminating or reducing maladaptive behaviors, including but not limited to the following: contingent application of noxious, painful, intrusive stimuli or activities; any form of noxious, painful, or intrusive spray (including water or other mists), inhalant, or tastes; contingent food programs that include the denial or delay of the provision of meals or intentionally altering staple food or drink to make it distasteful; movement limitation used as punishment, including but not limited to helmets

and mechanical restraint devices; physical restraints; blindfolds; and, white noise helmets and electric shock. Aversives do not include such interventions as voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; positive reinforcers such as small amounts of food used as a reward for successful completion of a clinical task or token fines as part of a token economy system; brief physical prompts to interrupt or prevent a specific behavior; or interventions prescribed by a physician for the treatment or protection of the child. The provider's written policy should clearly prohibit the use of corporal punishment, emotional or physical abuse or maltreatment, and the use of aversive interventions in any form during the provision of EIP services. Behavior management techniques can be used to prevent a child who is undergoing episodic behavioral or emotional disturbance from seriously injuring him/herself or others. For all children exhibiting behavior which may be injurious to the child or others, least intrusive measures should be used first. Techniques such as holding or physical redirection are used as a last resort. Behavior management techniques to prevent or minimize injury shall be used only for as long as the duration of the incident. When physical interventions are needed, training and supervision must be provided to staff on their use. The appropriate people must be informed when a child is exhibiting behaviors requiring intervention including the parent, the service coordinator and/or the Early Intervention Official. Parents cannot be asked to sign waivers or consent forms to allow the provider to use punishments for unwanted behaviors. When self-injurious or aggressive behavior is persistent and ongoing, the provider must take appropriate actions, including seeking the expertise of qualified personnel and obtaining parent approval for interventions. A behavior management plan must be developed by qualified personnel with appropriate expertise and documented in the child record. The behavior management plan must be in writing and signed by the parent. The plan must be developed in concert with the child's family and providers of early intervention services, and other clinical experts as needed. A medical evaluation should be conducted to address medical conditions. The plan should be a result of a thorough assessment of cause or behavioral functions, and should be implemented by appropriately trained individuals. All providers serving the child should have a copy of the behavior management plan. The parent has the right to revoke approval of the plan at any time. For additional information on health and safety, please refer to: Early Intervention Program Guidance Document, "Health and Safety Standards For The Early Intervention Program And Frequently Asked Questions, Revised – February 2010."

Exhibit B
Monitoring Indicator That Did Not Meet Early Intervention Program Standards

Indicator, Priority Area and Reference

Provider Indicator 52: Providers have policies and procedures to address child and provider illness and emergencies.

Federal Priority Area: General Supervision

Reference: EIP regulation 10NYCRR 69-4.9(d)(1) states that "All early intervention providers shall ensure that early intervention program services are delivered in a manner that protects the health and safety of eligible children. Early intervention providers shall: (1) comply with standards for health, safety, and sanitation issued by the Department for the early intervention program, and for early intervention providers who are otherwise required to be approved by another state agency to deliver health or human services, complying with health, safety and sanitation standards issued by such other agency." EIP regulation 10NYCRR 69-4.9(d)(3)(iv) states that "Early intervention providers shall: protect the health, safety, and welfare of eligible children during delivery of early intervention services, including with respect to and as applicable: (iv) illness." EIP regulation 10NYCRR 69-4.9(e)(iii) states that "Providers subject to this paragraph shall ensure that the physical site or setting where services are delivered protects the health and safety of early intervention program children with respect to: (iii) illness, injury, or emergencies, including allergic reactions." EIP regulation 10NYC RR 69-4.9(g) (2) (i) states that "Providers shall make reasonable efforts to notify the child's parent with in a reasonable period prior to the date and time on which a service is to be delivered, of any temporary inability to deliver such service due to circumstances such as illness, emergencies, hazardous weather, or other circumstances which impede the provider's ability to deliver the service."

All or some of the following review processes were used to assess this indicator:

- Interviews conducted with provider/agency staff.
- Interviews conducted with parents.
- Review of individual child records.
- Review of other documentation including training materials, contracts, memos, personnel files, data system records, etc.
- Direct observation.
- Review of written policy.

Review Results

Regulation Finding

The following review process (es) indicated that the provider was not in compliance with PHL, regulations, and Department guidance:

- Written policy did not describe a procedure to address child and provider illness, emergencies, or other inability to provide services. Specifically, the policy did not indicate:
 - Specific child health information is maintained and there is a written allergy plan for each child as needed.
 - A procedure to address provider illness, emergency, or other inability to provide services.
 - The Early Intervention Official is notified as soon as possible of significant child illness or emergency incidents which occur during service provision.
 - The Early Intervention Official is notified when excessive child absence occurs.

The provider is required to develop, and submit for approval, a CAP which addresses the issues cited above and ensures compliance with PHL, regulations, and Department guidance.

Providers must maintain procedures to address child illnesses including: parent notification of the onset of child illness; a sick day policy stating that if fever, vomiting, or diarrhea is present, the early intervention service is rescheduled according to the provisions of the IFSP; and the collection and maintenance of specific child allergy information. Providers must also have procedures to address emergency situations including: responding to children with allergic reactions; administration of first aid and CPR (if certified) or contacting appropriate medical personnel (including 911); and provider illness, emergency, or other inability to provide services. Procedures must also include notification of the Early Intervention Official as soon as possible of significant child illness, emergency incidents which occur during service provision, and when excessive child absence occurs. The provider's written policy should describe these procedures for child and provider illness and emergencies. Providers must also inform parents of these policies and procedures and maintain documentation that parents were notified. Documentation of all health and safety related incidents or injuries involving children while they are receiving services must be maintained including documentation of incidents/injuries, emergency efforts, first aid, and incident reports. Emergency contact numbers for medical assistance and transportation, and a telephone to report emergency situations must be readily available.

For additional information on health and safety, please refer to: Early Intervention Program Guidance Document, "Health and Safety Standards for the Early Intervention Program and Frequently Asked Questions, Revised - February 2010."

Exhibit B
Monitoring Indicator That Did Not Meet Early Intervention Program Standards

Indicator, Priority Area and Reference

Provider Indicator 81: The provider has procedures in place to address unsafe conditions encountered in the home environment.

Federal Priority Area: General Supervision

Reference: EIP regulation 10NYCRR 69-4.9(d) (1) states that "All early intervention providers shall ensure that early intervention program services are delivered in a manner that protects the health and safety of eligible children. Early intervention providers shall: (1) comply with standards for health, safety, and sanitation issued by the Department for the early intervention program, and for early intervention providers who are otherwise required to be approved by another state agency to deliver health or human services, complying with health, safety and sanitation standards issued by such other agency." EIP regulations 10NYCRR 69-4.9(d) (3) (iv) and (vi) state that "Early intervention providers shall: protect the health, safety, and welfare of eligible children during delivery of early intervention services, including with respect to and as applicable: (iv) illness," and "(vi) delivery of services in physical environments that protects the health and safety of children during service delivery."

All or some of the following review processes were used to assess this indicator:

- Interviews conducted with provider/agency staff.
- Interviews conducted with parents.
- Review of individual child records.
- Review of other documentation including training materials, contracts, memos, personnel files, data system records, etc.
- Direct observation.
- Review of written policy.

Review Results

Regulation Finding

The following review process(es) indicated that the provider was not in compliance with PHL, regulations, and Department guidance:

- Written policy did not describe a process to address unsafe conditions encountered in the home environment. Specifically, the provider's written policies did not indicate:
 - Procedures to address unsafe conditions encountered in the home environment that
 - would pose harm to children.
 - That the provider will observe the setting to ensure that safe conditions exist for each therapy session.

The provider is required to develop, and submit for approval, a CAP which addresses the issues cited above and ensures compliance with PHL, regulations, and Department guidance.

Providers must have procedures in place to address unsafe conditions encountered in the family's home environment that would pose harm to children during service delivery. These procedures must involve taking immediate actions to address unsafe conditions in the home including parent education, notifying the Early Intervention Official (EIO) and/or service coordinator, and recommending, if appropriate, an alternate service location to the parent and/or EIO. Additionally, if a provider observes or suspects child abuse or maltreatment, the provider should call an appropriate authority, including the SCR, local child protective services, Early Intervention Official/Designee, the child's EI service coordinator, and/or an EI supervisor. The provider's written policy should describe procedures to address unsafe conditions in the home environment, and to ensure safety for each service session.

For additional information on health and safety, please refer to: Early Intervention Program Guidance Document, "Health and Safety Standards For The Early Intervention Program And Frequently Asked Questions, Revised - February 2010."

Attachment F: Transmittal Letter

Transmittal Letter Template

[TO BE COMPLETED ON BIDDER'S LETTERHEAD]

Date:	Bidder Phone No.:
Bidder Name:	Bidder Fax No.:
Bidder Address:	Bidder Contact E-mail Address:
Federal Employee Identification Number:	NYS Vendor ID #:

Vendor RFP Designated Contact Person: *<bidder representative for RFP response>*

Vendor RFP Designated Contact Details: *<address [if different from above], telephone(s), fax, email>*

[Insert Bidder's complete name and address, including the name, mailing address, email address, fax number and telephone number for both the authorized signatory and the person to be contacted regarding the proposal] submits this firm and binding offer to the Department in response to the above- referenced RFP and agrees as follows:

1. Bidder provides the following statement which describes the legal structure of the entity submitting the proposal: **[Insert Bidder's Response]**;
2. Bidder accepts the contract terms and conditions contained in this RFP, including any exhibits and attachments;
3. Bidder acknowledges receipt of all Department amendments to this RFP, as may be amended;
4. Bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;
5. Bidder agrees that the proposal and all provisions of the proposal will remain valid for minimum of 365 calendar days from the closing date for submission of proposals;
6. Bidder certifies:
 - a. That there are business relationships and/or ownership interests for the above named organization that may represent a conflict of interest for the organization as bidder, as described in the RFP. Attached to this letter is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided; **OR**
 - b. That no conflict of interest relationship exists for the above named organization as bidder

7. Bidder is/is not [indicate one] proposing to utilize the services of any subcontractor(s). If a proposal is submitted which proposes to utilize the services of a subcontractor(s), the bidder provides, in an Appendix to this Transmittal Letter, a subcontractor summary for each listed subcontractor and certifies that the information provided is complete and accurate.

The summary document for each listed subcontractor should contain the following information:

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

The undersigned individual affirms and represents that he/she has the legal authority and capacity to sign and submit this bid on behalf of **[Insert Bidder's Name]** as well as to execute a contract with the Department.

Signature of Authorized Official:

Printed Name of Authorized Official:

Attachment G: Technical Proposal Work Plan

Name of Bidder: _____

Page No.: _____

[Copy for extra pages]

Deliverable	Activities to Meet Deliverable	Person(s) Responsible	Timeline for Completion

Attachment H: EI Cost Proposal Bid Detail Sheet

INSTRUCTIONS:

Complete the cost proposal bid chart, for monitoring reviews to calculate the total price for the five year contract period. The price must be inclusive of all costs to the Department.

- * The total number of activities by type is provided for proposal evaluation purposes only. The total number of completed encounters and reviews completed may vary from these estimates.
- ** Payment will be based on the actual number of encounters and reviews completed under the contract. Reviews will be paid in full when the monitoring CAP response is completed to the satisfaction of the Department.
- *** The total number of hours required to modify and maintain the Monitoring Application is provided for proposal evaluation purposes only. The total number of hours completed may vary from these estimates. Payment will be based on actual number of hours authorized and completed under the contract.
- **** The Administrative Services price, as described in section III (A)(2) of this RFP, may not exceed ten percent (10%) of the grand total five year bid price.

ATTESTATION:

I, _____, for and on behalf of the Bidder organization(s), signify that the following information is true and accurate to the best of my knowledge and that the Bidder organization(s) agrees to abide by the terms of the approved proposal and is fully able and willing to carry out the deliverables contained herein. The prices presented in this proposal shall remain in effect for 365 days from the last day to submit a proposal.

Signature

Title

Date

Print Name

A	B	C	D	E	F	G	H	I
		YEARS 1, 2 and 3 of Contract			YEARS 4 and 5 of Contract			TOTALS
	# of Reviews Each Year of the 5-Year Contract *	Price per Type of Review for first 3 Years of Contract		Price of Reviews for first 3 Years of Contract**	Price per Type of Review for Years 4 and 5 of Contract		Price of Reviews for Years 4 and 5 of Contract**	5-Year Prices for Contract Deliverables
CONTRACT DELIVERABLES			Multiply	(B x C x D = E)		Multiply	(B x F x G = H)	(E + H = I)
1. Comprehensive Reviews for Regulation Compliance (including CAP reviews)								
Agency Reviews (including municipalities)	42	\$	x 3	\$	\$	x 2	\$	
Individual provider reviews	100	\$	x 3	\$	\$	x 2	\$	
2. Verification Reviews	5	\$	x 3	\$	\$	x 2	\$	
3. Investigative Reviews (including CAP reviews)	2	\$	x3	\$	\$	x2	\$	
Subtotal				\$			\$	\$
	# of Hours Each Year of the 5-Year Contract***	Price Per Hour		Price of Data System for first 3 Years of Contract (B x C x D = E)	Price Per Hour		Price of Data System for Years 4 and 5 of Contract (F x G = H)	
4. Modify Monitoring Application	120	\$	x 3	\$	\$	x 2	\$	
5. Maintain Monitoring Application & House Data	120	\$	x 3	\$	\$	x 2	\$	
Subtotal Monitoring Application & Data		\$		\$			\$	\$

A	B	C	D	E	F	G	H	I
		Price Per Year		Admin Services Price for first 3 Years of Contract (C x D = E)	Price Per Year		Admin Services Price for Years 4 and 5 of Contract (F x G = H)	Admin Service Price (May not exceed 10% of Grand Total)
Administrative Services ****		\$	x 3	\$	\$	x 2	\$	\$
Grand Total		\$		\$	\$		\$	\$

Attachment J: No Bid Form

**NEW YORK STATE
DEPARTMENT OF HEALTH**

NO-BID FORM

PROCUREMENT TITLE: _____ FAU # _____

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

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

- Please retain our firm on your mailing list.

(Firm Name)

(Officer Signature) _____
(Date)

(Officer Title) _____
(Telephone)

(e-mail Address)

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

Attachment K: Vendor Responsibility Attestation

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

Choose one:

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

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

Attachment L: MWBE Procurement Forms

NYSDOH M/WBE RFP REQUIRED FORMS

All DOH procurements have a section entitled “**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE REQUIREMENTS.**” This section of procurement sets forth the established DOH goal for that particular procurement and also describes the forms that must be completed with their bid. Below is a summary of the forms used in the DOH MWBE Participation Program by a bidder.

Form #1: Bidder MWBE Utilization Plan - This document should be completed by all bidders responding to RFPs with an MWBE goal greater than zero. The bidder must demonstrate how it plans to meet the stated MWBE goal. In completing this form, the bidder should describe the steps taken to establish communication with MWBE firms and identify current or future relationships with certified MWBE firms. The second page of the form should list the MWBE certified firms that the vendor plans to engage with on the project and the amount that each certified firm is projected to be paid. Plans to work with uncertified firms or women and minority staffed firms do not meet the criteria for participation. The firm must be owned and operated by a Woman and/or Minority and must be certified by NYS Empire State Development to be eligible for participation. If the plan is not submitted or is deemed deficient, the bidder may be sent a notice of deficiency. It is mandatory that all awards with goals have a utilization plan on file.

Form #2: MWBE Utilization Waiver Request - This document should be filled out by the bidder if the utilization plan (Form #1) indicates less than the stated participation goal for the procurement. In this instance, Form #2 must accompany Form #1 with the bid. If Form #2 is provided and goal was initially set higher, revised goal approval will be necessary from DOB. When completing Form #2, it is important that the bidder thoroughly document the steps that were taken to meet the goal and provide evidence in the form of attachments to the document. The required attachments are listed on Form #2 and will document the good-faith efforts taken to meet the desired goal. A bidder can also attach additional evidence outside of those referenced attachments. Without evidence of good-faith efforts, in the form of attachments or other documentation, the Department of Health may not approve the waiver and the bidder may be deemed non-responsive.

New MWBE firms are being certified daily and new MWBE firms may now be available to provide products or services that were historically unavailable. If Form #2 is found by DOH to be deficient, the bidder may be sent a deficiency letter which will require a revised form to be returned within 7 business days of receipt to avoid a finding of non-compliance. DOH may work directly with firm to resolve minor deficiencies via e-mail.

Form #3: Replaced by Online Compliance System - <https://ny.newnycontracts.com> Contractors will need to login and submit payments to MWBE Firms in this online system once payments to these vendors commence.

Form #4 – MWBE Staffing Plan- This form should be completed based on the composition of staff working on the project. Enter the numbers or counts in the corresponding boxes and add up the totals in each column. This form is for diversity research purposes only and has no bearing on MWBE goal achievement.

Form #5 – EEO and MWBE Policy Statement -This is a standard EEO policy that needs to be signed and dated and submitted. If Bidder has their own EEO policy it may be submitted instead of endorsing this document.

**- M/WBE Form #1 -
New York State Department of Health
M/WBE UTILIZATION PLAN**

Bidder/Contractor Name: Click here to enter text.	
Vendor ID: Click here to enter text.	Telephone No. Click here to enter text. Email: Click here to enter text.
RFP/Contract Title: Click here to enter text.	RFP/Contract No. Click here to enter text.

Description of Plan to Meet M/WBE Goals

Click here to enter text.

PROJECTED M/WBE USAGE

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

“Making false representation or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization.”

**New York State Department of Health
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
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 () -		\$ _____

**- M/WBE Form #2 -
New York State Department of Health
Waiver Request**

Offeror/Contractor Name: Click here to enter text.	Federal Identification No.: Click here to enter number.	
Address: Click here to enter text.	Solicitation/Contract No.: Click here to enter number.	
City, State, Zip Code: Click here to enter text.	M/WBE Goal: MBE %%% WBE %%% (From Form #1)	
By submitting this form and the required information, the officer or/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.		
Contractor is requesting a: <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. Total Partial <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. Total Partial <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development: Click here to enter a date.		
<hr/> PREPARED BY (Signature) _____ Date: _____ SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.		
Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:
***** FOR DMWBD USE ONLY *****		
REVIEWED BY:		DATE:
Submit with the bid or proposal or if submitting after award submit to: doh.sm.mwbe@health.ny.gov	Waiver Granted: <input type="checkbox"/>YES <input type="checkbox"/>NO MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued	
	*Comments: _____	

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

For project staff, consultants and/or subcontractors working on this grant complete the following plan. This has no impact on MWBE utilization goals, or the submitted Utilization Plan - Form#1. This is for diversity research purposes.

Contractor Name _____

Address _____

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Executive/Senior level Officials							
Managers/Supervisors							
Professionals							
Technicians							
Administrative Support							
Craft/Maintenance Workers							
Laborers and Helpers							
Service Workers							
Totals							

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

- Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations. Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- 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.
- Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

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

Name & Title

Signature & Date

Detailed Instructions for Completing MWBE Forms 1 & 2

Form#1 – MWBE Utilization Plan

Page #1 of Form #1:

Description of Plan - Describe any steps/details that support Bidder/Contractor plan to meet the MWBE goals stated in the procurement/contract.

Line#1 - Total Dollar Value of Proposal Bid – This line should represent the total dollar amount of bid. The total value is eligible for MWBE goal setting.

Line#2 - MBE Goal Applied to the Contract– Bidder/Contractor lists the amount to be paid/subcontracted to Certified Minority-owned Business Enterprise(s) and the percentage this amount represents of the Total Dollar Value of Proposal Bid listed on Line #1.

Example: If paying two MBE firms \$100,000 & \$50,000 each and Total Dollar Value of Proposal Bid listed on line #1 is \$1,000,000, list 15% and \$150,000 on Line #2.

Line#3 - WBE Goal Applied to the Contract– Bidder/Contractor lists the amount paid/subcontracted to Certified Woman-owned Business Enterprise(s) and the percentage this amount represents of the Total Dollar Value of Proposal Bid listed on Line 1 of the “Form #1 MWBE Utilization Plan”.

Example: If Bidder/Contractor is paying two WBE firms \$50,000 & \$100,000 each and the Total Dollar Value of Proposal Bid listed on line#1 is \$1,000,000 Bidder/Contractor would list 15% and \$150,000 on Line #2 of the Utilization Plan.

Line#4 - MWBE Combined Totals – Total of Line #2 and Line #3. [Line #2 + Line #3 = MWBE Combined Totals]

Example: Using the above Line #2 and Line #3 examples for payment data, Bidder/Contractor achieves a combined MWBE % of 30% and a combined MWBE dollar amount of \$300,000. (15%M and 15%W; \$150,000M + \$150,000W). MWBE total/Total dollar value of bid = %.

Page#2 of Form#1:

The first column (left column): Bidder/Contractor lists any Minority-owned Business Enterprises (MBE) that Bidder/Contractor will be subcontracting with or purchasing from and the MBE contact/company information.

The second column (center column): Bidder/Contractor describes what type of work certified MBE will be providing or what product certified MBE will be supplying to Bidder/Contractor.

Third column (right column): Bidder/Contractor states the amount to be paid to the certified MBE during the term of the contract. The amount totaled from Page #2 should equal the amount listed on Line #2 of Page #1.

Page#3 of Form#1:

The first column (left column): Bidder/Contractor lists any Woman-owned Business Enterprises (WBE) that Bidder/Contractor will be subcontracting with or purchasing from and WBE contact/company information.

The second column (center column): Bidder/Contractor describes what type of work certified WBE will be providing or what product certified WBE will be supplying to Bidder/Contractor.

Third column (right column): Bidder/Contractor states the amount to be paid to the certified WBE during the term of the contract. The amount totaled from Page#3 should equal the amount listed on Line#3 of Page#1.

Form#2 – MWBE Waiver Request

“Form#1 MWBE Utilization Plans” that commit to a goal % less than the stated MWBE goal percentage in procurement, must be accompanied by a “Form#2 MWBE Waiver Request”.

A Bidder/Contractor may qualify for a partial or total waiver of the MWBE goal requirements established on a State contract only upon the submission of a waiver form by a Bidder/Contractor, documenting good-faith efforts by the Contractor to meet the goal requirements of the state contract and a consideration of applicable factors. The ability to subcontract with M/WBEs and separately the ability to purchase with M/WBEs must be addressed in attachments on all waiver requests.

Fill out the header with the name of the Bidder/Contractor requesting the waiver under Offeror/Contractor Name, include your Federal Identification ID, Address, Solicitation/Contract Number, and M/WBE Goals.

Check off the appropriate box for the type of waiver that is being requested and whether it is a total or partial waiver. If the waiver is Pending ESD Certification, meaning the subcontractor has applied for certification with Empire State Development, check off that box and state the date that they applied for certification.

Next, and directly below the Pending ESD Certification area, please sign and date the waiver. Provide the name of the preparer as well as a telephone number and email address (Bidder/Contractor direct contact number of person authorized to discuss submission).

The following attachments should also be provided:

1. A statement setting forth your basis for requesting a partial or total waiver. The statement should at a minimum include the services being subcontracted out and why a portion of those services cannot be subcontracted to Certified MWBE(s). In addition, statement must also include what purchases of equipment and supplies are being made and why those purchases cannot be provided by certified MWBE(s).
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals related to this contract.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.

6. Provide copies of responses to your solicitations received by you from certified M/WBEs.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

*** All attachments are created by the entity requesting the waiver. These are self-generated attachments and are not provided by the agency.**

Attachment M: 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

**Attachment N: Sample Standard New York State Boilerplate Contract
with Appendices**

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: 3450257

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

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:

\$ _____
(Value before amendment)

From ____ / ____ / ____ to ____ / ____ / ____.
(Initial start date)

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

\$ _____

From ____ / ____ / ____ to ____ / ____ / ____.

This will result in new contract terms of:

\$ _____
(All years thus far combined)

From ____ / ____ / ____ to ____ / ____ / ____.
(Initial start date) (Amendment end date)

Signature Page for:

Contract Number: _____

Contractor: _____

Amendment Number: X-_____

BSC Unit ID: 345<XXXX>

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the
dates appearing under their signatures.

CONTRACTOR SIGNATURE:

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

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

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

(Signature and office of the individual taking acknowledgement)

STATE AGENCY SIGNATURE

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

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

ATTORNEY GENERAL'S SIGNATURE

By: _____ Date: _____

STATE COMPTROLLER'S SIGNATURE

By: _____

Date: _____

Revised 6/3/2013

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life

of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take

reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of

\$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles

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

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

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

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

24. PROCUREMENT LOBBYING.

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

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

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the

certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing

written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

STATE OF NEW YORK
AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:

- 3. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: DOHaccounts payable@ogs.ny.gov with a subject field as follows:
Subject: **Unit ID: 3450257 <<Contract #>>**

(Note: **do not** send a paper copy in addition to your emailed voucher.)

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

**NYS Department of Health
Unit ID 3450257
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. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

III. Term of Contract

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

IV. Proof of Coverage

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

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

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

V. Indemnification

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

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

**APPENDIX D
GENERAL SPECIFICATIONS**

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

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

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

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

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

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

Technology.

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

N. Date/Time Warranty

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

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

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

2. Date/Time Warranty Statement

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

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

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

- O. No Subcontracting Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- P. Superintendence by Contractor The Contractor shall have a representative to provide supervision of the work

which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.

- Q. Sufficiency of Personnel and Equipment If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.
- R. Experience Requirements The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.
- S. Contract Amendments. This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

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

T. Provisions Upon Default

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

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

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

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

work is to be performed and the type or types of material or equipment that shall be used.

W. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
 - a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
 - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction 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, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

- A. Regulatory References. A reference in this AGREEMENT to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this AGREEMENT from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix H of this AGREEMENT shall survive the termination of this AGREEMENT.
- D. Interpretation. Any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this AGREEMENT, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

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 **30%** for Minority and Women-Owned Business Enterprises (“MWBE”) participation, **15%** for Minority-Owned Business Enterprises (“MBE”) participation and **15%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

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

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

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

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.

3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form #4 - Staffing Plan

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

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

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State

Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

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

IV. MWBE Utilization Plan

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

V. Waivers

- A. For Waiver Requests Contractor should use Form #2 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

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

VII. Liquidated Damages - MWBE Participation

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

expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.