



# Department of Health

## Request for Proposals

**RFP # 17625**

### **Person-Centered Planning Comprehensive System Transformation Statewide Training Initiative**

**Issued: March 29, 2018**

**DESIGNATED CONTACT:**

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contact to whom all communications attempting to influence the Department of Health's conduct or decision regarding this procurement must be made.

Elizabeth Wood  
Bureau of Contracts  
New York State Department of Health  
Corning Tower, Room 2827  
Albany, New York 12237  
Telephone: 518-474-7896  
Email Address: [elizabeth.wood@health.ny.gov](mailto:elizabeth.wood@health.ny.gov)

**PERMISSIBLE SUBJECT MATTER CONTACT:**

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health identifies the following allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions, and debriefings.

Michael Lewandowski  
New York State Department of Health  
Bureau of Communications, Contracts, and Financial Management  
Division of Employee and Program Support  
Office of Health Insurance Programs  
One Commerce Plaza, Room 1470  
Albany, NY 12237  
Telephone: (518) 474-9856  
Email Address: [OHIPContracts@health.ny.gov](mailto:OHIPContracts@health.ny.gov)

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## 1.0 CALENDAR OF EVENTS

<b>RFP # 17625 – PERSON-CENTERED PLANNING COMPREHENSIVE SYSTEM TRANSFORMATION STATEWIDE TRAINING INITIATIVE</b>	
<b><u>EVENT</u></b>	<b><u>DATE</u></b>
Issuance of Request for Proposals	March 29, 2018
Deadline for Submission of Written Questions	April 13, 2018 <b>4:00 p.m. ET</b>
Responses to Written Questions Posted by DOH	<b>On or About</b> May 4, 2018
Deadline for Submission of Proposals	May 22, 2018 <b>4:00 p.m. ET</b>
<i>Anticipated</i> Contract Start Date	October 1, 2018

## 2.0 OVERVIEW

Through this Request for Proposals (“RFP”), the New York State (“State”) Department of Health (“Department”) is seeking competitive proposals from training organizations able to provide services as further detailed in [Section 4.0](#) (Scope of Work). It is the Department’s intent to award one (1) contract from this procurement.

### 2.1 Introductory Background

Enhancing Person-Centered (PC) practice, or an individualized approach to supporting people with disabling conditions, aligns with an increasing number of regulatory requirements, such as the Home and Community-Based Services (HCBS) Final Rule. It also stands to help New York State (NYS) meet the Triple Aim goal of Medicaid Redesign; improving population health outcomes, patient experience of satisfaction and quality of care, and efficiency in the use of NYS’s health resources. In addition, the Money Follows the Person (MFP) federal demonstration relies on the health care services system’s responsiveness to the expressed preferences of the frail elderly and individuals with disabilities to drive the rebalancing of the long-term care system away from institutional placements and towards HCBS delivered in community settings.

Home and Community-Based Services are important services for the frail elderly and people with disabilities that may help prevent the need for costlier institutional services that are provided in more regimented and restrictive residential and non-residential service settings. The HCBS field has faced significant changes since the Centers for Medicare & Medicaid Services (CMS) published the HCBS Final Rule, which is commonly referred to as “The Community Rule.” The rule, effective March 17, 2014, established new standards for the provision of Medicaid-funded HCBS, and set requirements for the planning of recipients’ services and supports. In NYS, this rule applies to those HCBS services provided through the waiver authorities 1915(c), 1915(k), and the 1115 Demonstration Waiver, which is where the clear majority of HCBS fall.

Person-Centered planning and practice standards are also included within several new federal regulations pertaining to both institutional services and HCBS. Most notable of these is the Medicaid and Children’s Health Insurance Program (CHIP) Managed Care Final Rule, published May 6, 2016. This far-reaching rule’s PC planning standard is stated in 441.301(c)(3), which is the same PC planning standard contained within the HCBS Final Rule. The Department believes that wide-spread PC practice enhancement can be achieved through statewide trainings and increased standardization of PC planning processes and tools, across provider types and populations.

A definition of terms relevant to the discussion of person-centeredness can assist to describe the context for the deliverables sought through this RFP. These terms are outlined below:

## **A. Person-Centered Practice**

Person-Centered practice is the arrangement of services and supports that give individuals the ability to access all the benefits of community living while receiving those services in a manner that can help them reach their individual goals. PC practice is used as an umbrella term under which a variety of different person-centered models can fall, and it differs significantly from the more traditional models, such as institutional care and managed care.

New York State's health and human service system has been moving towards PC practice for decades through the promotion of models such as, Patient-Centered Practice, Resident-Centered Care, Person-Centered Care, etc. This evolution has been challenging for a large and complex system as it involves a dramatic shift in thinking for those organizations and systems more embedded in the traditional models, and a shift in the roles and relationships support persons have with the individuals they serve. This shift in thinking involves listening to the individuals served without firm opinions and judgments. This can be difficult because of the protective perspectives that professionals and para professionals have towards the individuals they serve and the roles the frail elderly and individuals with disabilities have in our society. Given the number of studies which indicate PC practice and planning improves quality of care, health outcomes and reduces health care costs, there are ample reasons to promote its use beyond the regulatory requirements.

## **B. Person-Centered Planning**

Person-Centered Planning includes Recovery Planning, Individualized Service Planning, and Resident-Centered Service Planning and is part of the larger realm of PC practice. The overarching intent of PC planning is to develop a collaborative, individualized, goal-oriented program of care delivery that also involves the individuals served having community presence and participation. Furthermore, the PC planning standards within the HCBS Final Rule state the provider must support the individual along with their circle of support (family, friends, advocates), to develop and implement an individualized PC plan focused on the goals and preferences of the individual, which also demonstrates their options and choices for services and residential settings.

## **C. Person-Centered Thinking**

Person-Centered thinking is a set of tools a person uses in PC planning, taking the different ways providers do the work and breaking them down into parts, in order to have discrete tools to support the individual(s) being served. Research suggests that to develop an effective PC practice curriculum it must teach both what to do and how to think.

Person-Centered thinking involves accepting a degree of 'inherited risk'. Supporting people to try out new skills (such as those required to get out into the community with limited mobility), without use of one-on-one staffing or other labor-intensive approaches, requires creativity and innovation in today's risk-adverse environment. This kind of risk can seem untenable given the increased oversight by agencies, and in times when growing staff time is devoted to incident reporting and risk avoidance, but it remains critically important.

## **D. Person-Centered Learning Organizations**

"Person-Centered Learning Organizations" are defined for the purposes of this RFP as provider organizations that facilitate the learning of their members/staff to continuously transform themselves in support of the implementation of PC best practices.

Having good PC practice and PC thinking generally leads to good PC planning. However, good PC planning does not necessarily lead to good PC practice. State and provider agency staff have reported difficulty in successfully implementing PC planning initiatives. A review of recent PC training practices in NYS revealed that training initiatives often fail to address PC thinking, planning, and practice in a coordinated fashion, nor do they provide support or training for the lengthy follow-up coaching needed from leadership trained to ensure that staff implementing plans can sustain PC practice.

The Department believes that wide-spread PC practice enhancement can be achieved through statewide trainings and increased standardization of PC planning processes and tools, across provider types and populations.

## 2.2 Important Information

The bidder is required to review, and is requested to have legal counsel review, Attachment E, the DOH Agreement as the Bidder must be willing to enter into an Agreement substantially in accordance with the terms of Attachment E should the bidder be selected for contract award. Please note that this RFP and the awarded bidder's proposal will become part of the contract as Appendix B and C, respectively.

It should be noted that Appendix A of Attachment E, "Standard Clauses for New York State Contracts", contains important information related to the contract to be entered into as a result of this RFP and will be incorporated, without change or amendment, into the contract entered into between DOH and the successful Bidder. By submitting a response to the RFP, the Bidder agrees to comply with all the provisions of Appendix A. Note, Attachment A, the Bidder's Certifications/Acknowledgements, should be submitted and includes a statement that the bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this RFP including any exhibits and attachments. It also includes a statement that the bidder 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 DOH.

Any qualifications or exceptions proposed by a bidder to this RFP should be submitted in writing using the process set forth in [Section 5.2](#) (Questions) prior to the deadline for submission of written questions indicated in [Section 1.0](#) (Calendar of Events). Any amendments DOH makes to the RFP as a result of questions and answers will be publicized on the DOH web site.

## 2.3 Term of the Agreement

This contract term is expected to be for a period of two (2) years, three (3) months, with an option for a single one (1) year extension, commencing on the date shown on the Calendar of Events in [Section 1.0](#), subject to the availability of sufficient funding, successful contractor performance, and approvals from the New York State Attorney General (AG) and the Office of the State Comptroller (OSC).

## 3.0 BIDDERS QUALIFICATIONS TO PROPOSE

### 3.1 Minimum Qualifications

The NYSDOH will accept proposals from organizations with the following types and levels of experience as a prime contractor.

- Bidder must have at least three (3) years' experience with delivering a large city, state or federal level training program to professionals;
- Bidder must have at least three (3) years' experience with outcome monitoring, reporting, and quality assurance of a large city, state or federal level training program;
- Bidder must have at least two (2) years' experience with development and implementation of a large city, state or federal level training initiative;
- Bidder must have at least one (1) year experience in the area of PC practice, planning, and/or thinking; and
- Bidder must have at least one (1) year experience providing training, technical assistance, and/or policy development in at least one (1) of the following three (3) disability service systems:
  - aging/cognitive/physical disabilities,
  - mental/behavioral disabilities, or
  - developmental disabilities.

For the purposes of this RFP, a prime contractor is defined as one who has the contract with the owner of a project or job and has full responsibility for its completion. A prime contractor undertakes to perform a complete contract and may employ (and manage) one or more subcontractors to carry out specific parts of the contract.

Failure to meet these Minimum Qualifications will result in a proposal being found non-responsive and eliminated from consideration.

### 3.2 Preferred Qualifications

Bidders that demonstrate the following experience are preferred:

- At least three (3) years’ experience delivering learning institutes (training mechanisms that promote change needed at the systems level) and supporting the development of learning organizations, or organizations that operate in a manner that embraces critical thinking and reflection in search of creative solutions;
- At least two (2) years’ experience providing large city, state or federal level training services related to Person-Centered practice, planning, and/or thinking; and
- At least one (1) year experience developing Person-Centered Planning templates for any impacted populations’ service systems.

### 4.0 SCOPE OF WORK

This Section describes the training services that are required to be provided by the selected bidder. The selected bidder must be able to provide all of these services throughout the contract term.

**PLEASE NOTE:** Bidders will be required to provide responses that address all of the requirements of this RFP as part of its Technical Proposal.

The terms “bidders”, “vendors” and “proposers” are also used interchangeably. For purposes of this RFP, the use of the terms “shall”, “must” and “will” are used interchangeably when describing the Contractor’s/Bidder’s duties.

### 4.1 Tasks/Deliverables

To achieve wide-spread PC practice enhancement, the Contractor will conduct the following deliverables as part of a comprehensive statewide and system-wide training initiative based upon the schedule and deliverables listed below:

#### A. Deliverable Summary/Schedule:

Deliverable	Expected Due Date/Schedule
<b>B. Person-Centered Practice Toolkit/Resource Library:</b>	
Delivery of the PC-Practice Resource Materials	<b>30</b> days prior to the end of the first contract year
Modification of the PC-Practice Resource Documents	<b>30</b> days prior to the end of the second and third contract year (if renewal period exercised)
<b>C. Leadership Meetings:</b>	
Presentation/Meetings with the HCBS Rule Interagency Work Group	First within <b>30</b> days after contract approval and up to <b>four (4)</b> per contract year
<b>D. Learning Institutes:</b>	
Development and Delivery of Learning Institute Training Curriculum	<b>60</b> days after contract approval
Modification and Delivery of Learning Institute Training Curriculum	Within <b>30</b> days of the requested modification. The Department anticipates up to <b>four (4)</b> modifications per contract year
Delivery of Learning Institutes	At least <b>twelve (12) trainings</b> required to be conducted over the term of the contract (six [6] each contract year); including at least <b>one (1)</b> training conducted in each of the nine (9) regions identified in Section 4.1.D.2

Deliverable	Expected Due Date/Schedule
<b>E. Regional Trainings:</b>	
Development and Delivery of Regional Trainings Curricula	<b>60</b> days after contract approval
Modification Delivery of Regional Trainings Curricula	Within <b>30</b> days of the requested modification. The Department anticipates up to <b>four (4)</b> modifications per topic per contract year
Delivery of In-Person Regional Trainings: Person-Centered Practice for Managers	A minimum of <b>14</b> in-person trainings required each contract year, including at least <b>one (1)</b> training in each of the nine (9) regions identified in Section 4.1.D.2.
Delivery of Webinar-Based Regional Trainings: Person-Centered Practice for Managers	A minimum of <b>one (1)</b> required each contract year
Delivery of In-Person Regional Trainings: Person-Centered Thinking Train-The-Trainer	A minimum of <b>14</b> in-person trainings provided each contract year, including at least <b>one (1)</b> training in each of the nine (9) regions identified in Section 4.1.D.2.
Delivery of Webinar-Based Regional Trainings: Person-Centered Thinking Train-The-Trainer	A minimum of <b>one (1)</b> required each contract year
Delivery of In-Person Regional Trainings: Person-Centered Plan Development	A minimum of <b>29</b> in-person trainings provided each contract year, with at least <b>two (2)</b> trainings per each region identified in Section 4.1.D.2.
Delivery of Webinar-Based Regional Trainings: Person-Centered Plan Development	A minimum of <b>one (1)</b> required each contract year
Delivery of In-Person Regional Trainings: Person-Centered Plan Implementation	A minimum of <b>29</b> in-person trainings provided each contract year, with at least <b>two (2)</b> trainings per each region identified in Section 4.1.D.2.
Delivery of Webinar-Based Regional Trainings: Person-Centered Plan Implementation	A minimum of <b>one (1)</b> required each contract year
<b>Reporting</b>	
Learning Institute Reports	Due within <b>30</b> days of the completion of each Learning Institute
Report on Attendance for the Regional Trainings	Due at the end of the month in which the training was concluded, with the submission of each monthly voucher.
Training Evaluation Report of training methods and content, and trained individuals.	Due at the end of each quarter for the duration of the contract period
Monthly Progress Reports	Due at the end of each month, with the submission of each voucher

**B. Person-Centered Practice Toolkit/Resource Library:**

The Contractor will develop and deliver materials, at least 30 days before the end of the first contract year, to be included in a Person-Centered Practice Toolkit/Resource Library (Toolkit), which will ultimately serve as a repository for HCBS-compliant PC practice guidance and related resources.

1. The Contractor will develop and deliver materials for the Toolkit/Resource Library that will include, at a minimum, the following:
  - a. A PC planning template, which is HCBS Rule compliant, and contains the necessary language required to be present in the PC plans of all HCBS recipients under covered authorities;
  - b. Resources to support the use of assistive technology to promote independence and autonomy in residential and non-residential settings, including, but not limited to, innovative uses of both high and low technology items;

- c. Other publicly available resources or documents including, but not limited to, electronic links to other public domains, recommended policies, best practice examples, checklists, templates, and planning and practice tools, etc. that are relevant to PC Practice; and
  - d. All recorded Regional Training Webinars, as outlined in Section 4.1.E;
2. The materials for the Toolkit/Resource Library must:
    - a. Be made accessible for those with disabilities, such as potential age-related visual impairments or limited literacy skills;
    - b. Be organized into a minimum of three sections dedicated to resources specific for:
      - i. Persons with age-related, cognitive and/or physical disabilities;
      - ii. Persons with developmental/intellectual disabilities; and
      - iii. Persons with behavioral/mental health conditions;
    - c. Be designed for and organized based on the following intended audiences:
      - i. HCBS recipients (under covered HCBS authorities), their families, support persons, and advocates;
      - ii. HCBS providers (both residential and non-residential) including service planners, direct service staff and service providers, and agency management;
      - iii. Managed Care Organizations, including care managers, and insurers; and
      - iv. State and local officials and staff;
  3. The Contractor must obtain approval from the Department, in writing, of the content and format/layout of the Toolkit/Resource Library, including any updates.
  4. All resources to be included in the Toolkit/Resource Library are subject to the review and approval of the Department. The Department may request revisions, in whole or in part, prior to providing its approval of such resources;
  5. The Contractor will be required to update the resources for the Toolkit/Resource Library, at a minimum, within 30 days of the end of the Contract Year 2 and Contract Year 3 (if renewal is exercised).
  6. The Department will retain ownership of all resources/materials developed and/or delivered for the Toolkit/Resource Library upon contract expiration.

**C. Leadership Meetings:**

The Contractor will be required to:

1. Present in person, in Albany, New York, to the HCBS Rule Interagency Work Group (Work Group), within 30 days after contract approval, a high-level overview of the initiative described in this Scope of Work and best practices around PC practice to strengthen the strategic implementation of the initiative;
  - a. The Work Group is comprised of State agency representatives, HCBS providers, and other program specific health care professionals;
2. Attend in-person meetings in Albany, New York, with the Work Group, up to four (4) times per contract year at the request of the Department, to present updates related to the implementation of this initiative.

**D. Learning Institutes:**

To support the development and expansion of “Person-Centered Learning Organizations” throughout the State, the Contractor will be required to implement in-person Learning Institutes (training mechanisms that promote change needed at the systems level), as further described below:

1. Prior to conducting the Learning Institutes, the Contractor will:
  - a. Develop a preliminary training outline that includes the following:
    - i. Outline of content areas;
    - ii. Definition of clear and measurable goals and objectives;
    - iii. Description of teaching methodologies and modalities;
    - iv. Listing and description of all training materials to be used as part of training and/or technical assistance;
    - v. Description of pre/post-testing measurements, if required;
    - vi. Expected length of training; and
    - vii. Proposed instructors for the delivery of the training;
  - b. Develop the training curricula, including all related ancillary training materials for the classroom, workshop, and/or on-site training;
  - c. Submit the training outline and curriculum, including trainee and trainer manuals, within 60 days of



- contract approval;
    - i. The Department reserves the right to request revisions to the outline and/or curriculum;
    - ii. The Contractor must obtain the Department's approval of the outline and curriculum before use;
    - iii. The Department will retain ownership of all materials developed under this contract upon contract expiration;
  - d. Advertise, recruit, and register participants for the training events described in 4.1.D.2;
  - e. Coordinate, reproduce, and distribute all training materials required to effectively deliver training programs identified in Section 4.1.D.2;
    - i. All materials are subject to the review and approval of the Department prior to reproduction and distribution; and
    - ii. All materials must be distributed to the training participants one (1) week prior to the scheduled training;
  - f. Conduct the 'Learning Institute' training, in-person as described in Section 4.1.D.2 below;
  - g. Modify the training curricula.
    - i. During the course of the contract, the Department may require the training curricula to be updated and/or modified;
    - ii. Currently the Department anticipates up to four (4) annual curriculum modifications;
    - iii. Modified training curricula must be submitted to the Department within 30 days of the modification request;
    - iv. Modifications are subject to the review and approval of the Department;
2. The Contractor will be required to:
- a. Conduct at least twelve (12) Learning Institutes, six (6) per year, with at least one (1) Learning Institute being conducted within each of the following (9) regions across the State (See Attachment L):
    - i. New York City;
    - ii. Long Island;
    - iii. Lower Hudson Valley;
    - iv. Capital;
    - v. Rochester;
    - vi. Adirondack;
    - vii. Syracuse;
    - viii. Binghamton; and
    - ix. Buffalo.
  - b. Secure and provide locations for each learning institute;
    - i. Locations must be made accessible for those with disabilities, including being in compliance with the American Disabilities Act of 1990;
  - c. Begin the Learning Institute with a time intensive in-person training period of 3-5 days in duration to teach concepts, tools, and best practices. The actual number of days will be determined by the Contractor's approved training curriculum;
  - d. The intensive in-person training will serve an audience of approximately 20-30 people per institute; These individuals will include:
    - i. Provider agency management and staff involved in service planning and service provision (residential and non-residential settings/services);
    - ii. Individuals receiving Medicaid-funded HCBS and their circles of support; and
    - iii. Other natural supporters;
  - e. Conclude the initial intensive training period with development of an action plan(s) to implement PC best practice within each participant's organization/sphere of influence;
  - f. Include periodic, regular follow-up consultation (mentoring), using the most economic method (in-person, conference call, webinar, etc.) with the participants to assess and promote progress in accomplishing the goals and tasks outlined in the action plans over the next five (5) to six (6) months post initial intensive training;
  - g. At the end of the institute's five (5) to six (6) month action plan implementation period, a sustainability plan will be developed for each participant's organization to support the goal achievement related to their implementation of PC practice;
  - h. Promote, through the training and mentoring process described above, the following:
    - i. The development of "Innovation Directors", or leadership within provider organizations who build spaces for innovation in PC practice;
    - ii. The use of assistive technology; and

- iii. The sustainability of the learning communities;
3. Upon completion of each Learning Institute implementation period, to demonstrate the accomplishment of deliverables, the Contractor is required to submit the reporting identified in Section 4.3.A.

#### **E. Regional Trainings:**

The Contractor will be required to develop and conduct regional trainings, in-person and through webinars, on PC Practice topics as specified in 4.1.E.2.h for a variety of audiences.

1. Prior to conducting the Regional Trainings, the Contract will:
  - a. Develop a preliminary training outline for each of the four (4) Regional Training topics outlined in Section 4.1.E.2.h, that includes the following:
    - i. Outline of content areas;
    - ii. Definition of clear and measurable goals and objectives;
    - iii. Description of teaching methodologies and modalities;
    - iv. Listing and description of all training materials to be used as part of training and/or technical assistance;
    - v. Description of pre/post-testing measurements, if required;
    - vi. Expected length of training; and
    - vii. Proposed instructors for the delivery of the training;
  - b. Develop the training curricula, for each of the four (4) Regional Training topics outlined in Section 4.1.E.2.h, including all related ancillary training materials for the in-person and webinar trainings, based on information provided in this RFP and the PC Practice expertise of the Contractor;
  - c. Submit the training outline and curriculum, including trainee and trainer manuals, within 60 days of contract approval;
    - i. The Department reserves the right to request revisions to the outline and/or curriculum;
    - ii. The Contractor must obtain the Department's approval of the outline and curriculum before use;
    - iii. The Department will retain ownership of all materials developed under this contract upon contract expiration;
  - d. Advertise, recruit, and register participants for the training events described in 4.1.E.2;
  - e. Coordinate, reproduce, and distribute all training materials required to effectively deliver training programs identified in Section 4.1.E.2;
    - i. All materials are subject to the review and approval of the Department prior to reproduction and distribution; and
    - ii. All materials must be distributed to the training participants one (1) week prior to the scheduled training;
  - f. Secure the training location(s), which are to be determined by the Contractor and included in their training curricula;
    - i. The locations of the Regional trainings must be secured and provided by the Contractor and accessible for those with disabilities, including being in compliance with the American Disabilities Act of 1990;
  - e. Conduct the training as described in Section 4.1.E.2 below;
  - f. Modify each training curricula as requested by the Department;
    - i. Currently the Department anticipates up to four (4) annual curriculum modifications per topic, which will be determined on an as needed basis by the Department;
    - ii. Modified training curricula must be submitted to the Department within 30 days of the modification request;
    - iii. Modifications are subject to the review and approval of the Department;
2. The Regional Trainings will:
  - a. Be multimodal, offered both in-person and via webinar (as approved by the Department), to maximize the reach of the intended trainings;
  - b. Utilize effective adult learning principles and methodologies to deliver training successfully;
  - c. Offer content that is comprehensive, high quality, interactive, represents best practices in PC practice, and supports the sustainability of best practices;
  - d. Address barriers to PC practice at all levels of the service system;
  - e. Include information on the use of assistive technology to promote the autonomy and independence of recipients wherever relevant;

- f. Contain materials which have been tailored to New York State's highly diverse HCBS recipients in the following categories:
  - i. Persons who are aged/physically disabled;
  - ii. Persons with mental/behavioral disabilities; and
  - iii. Persons with developmental/intellectual disabilities;
- g. Include approximately 20-30 individuals to be trained in each in-person Regional training;
- h. Consist of the following four (4) primary training topics:
  - i. Person-Centered Practice for Managers**
    - 1. This training will be conducted for provider, State, and Contracted Staff at all levels, and individuals who are interested in PC practice from the perspective of policy development and organizational processes that support PC Practice;
    - 2. The focus of these interactive trainings will be on shifting the perspectives of agency leadership and the practices of agency management towards policies and procedures that promote person-centeredness within an agency;
    - 3. This training will include instruction and tools to facilitate the development, implementation, and sustainability of policies and procedures that support PC practice within an organization, including procedures for developing and updating PC plans and their implementation;
    - 4. This training will address the tension between 'efficiency' and 'individualization' in service delivery and agency processes; as well as between the concepts of 'expert' vs. 'participant as expert' and 'risk/safety' vs. 'choice/autonomy';
    - 5. The length of this training will be a ½ day;
    - 6. There will be a minimum of 14 in-person Person Centered Practice for Managers trainings provided each year, including at least one (1) training in each of the nine (9) regions identified in Section 4.1.D.2 of this RFP; and
    - 7. There will be a minimum of one (1) webinar-based Person-Centered Practice for Managers trainings provided each contract year;
    - 8. The Contractor will record the webinar training on this topic and electronically submit to the Department as identified in Section 4.1.B of this RFP.
  - ii. Person-Centered Thinking Train-The-Trainer**
    - 1. This training will be conducted for State, Contracted, and provider staff at all levels, including service planners, service providers, support staff, and agency leadership, and individuals who are interested in becoming trainers on PC thinking concepts and tools;
    - 2. The focus of these interactive trainings will be on developing PC thinkers and PC-thinking trainers, who will conduct trainings which aim to shift the mindsets of service planners and providers, support staff, agency leadership, individuals served, and their circles of support, towards more person-centered thought processes;
    - 3. This training will address the tension between understanding 'what is important for an individual' vs. 'what is important to an individual'; and between the concepts of 'risk/safety' vs. 'choice/autonomy';
    - 4. This training will include instruction and tools for participants to conduct training in PC Thinking within their own organizations/spheres of influence following the completion of the Train-the-Trainer course;
    - 5. The length of this training will be one (1) full day;
    - 6. There will be a minimum of 14 in-person Person Centered Thinking Train-the-Trainer trainings provided each year, including at least one (1) training in each of the nine (9) regions identified in Section 4.1.D.2 of this RFP;
    - 7. There will be a minimum of one (1) webinar-based Person-Centered Thinking Train-the-Trainer trainings provided each contract year; and
    - 8. The Contractor will record the webinar training on this topic and electronically submit to the Department as identified in Section 4.1.B of this RFP.
  - iii. Person-Centered Plan Development**
    - 1. This training will be conducted for all service planners including Case Managers/Care Managers/Service Coordinators from provider agencies, Managed Care Organizations (MCOs), and insurers, and individuals who are interested to learn how to create HCBS rule-compliant PC plans and a HCBS rule-compliant PC planning process;
    - 2. This training will include instruction and tools to enable participants to develop and periodically update PC plans that are compliant with the HCBS rule and other applicable statute and regulation and which are truly person-centered in their content and process;
    - 3. The length of this training will be a ½ day;

4. There will be a minimum of 29 in-person Person-Centered Plan Development trainings provided each year, with at least two (2) of the trainings conducted in each region identified in Section 4.1.D.2 of this RFP;
5. There will be a minimum of one (1) webinar-based Person-Centered Plan Development trainings provided each contract year; and
6. The Contractor will record the webinar training on this topic and electronically submit to the Department as identified in Section 4.1.B of this RFP.

**iv. Person-Centered Plan Implementation**

1. This training will be conducted for line staff, Direct Support Professionals, Nurse Case Managers, recipients, service planners and service providers, and State leadership, and interested members of circles of support;
2. Trainings will be activity-based and interactive, covering how individuals, staff, and circles of support can take part in the implementation of PC plans in truly person-centered ways;
3. The length of this training will be one (1) full day;
4. There will be a minimum of 29 in-person Person-Centered Plan Implementation trainings provided each year, with at least two (2) trainings provided per each region identified in Section 4.1.D.2 of this RFP;
5. There will be a minimum of one (1) webinar-based Person-Centered Plan Implementation trainings provided each contract year; and
6. The Contractor will record the webinar training on this topic and electronically submit to the Department as identified in Section 4.1.B of this RFP.

The Department will retain ownership of any curriculum materials developed or produced, as well as any related forms, recorded trainings, and other supporting materials involved in the above deliverables. Such materials must be made available for public domain by the Contractor, and will not be proprietary.

## **4.2 Staffing**

- A. The Contractor must maintain a sufficient number of culturally competent staff who have experience in healthcare, Medicaid, development and implementation of a large city, state or federal level training program, outcome monitoring/reliability, and who have delivered consistently high-quality training program(s).
- B. The Contractor must maintain a sufficient number of staff to fulfill the tasks of the project, including but not limited to: in-person and webinar training; refresher training; database and data outcome management; assessment and evaluation; travel and meeting coordination; on-going quality assurance; and outcome and quality monitoring.
- C. The Contractor must appoint a Project Director with direct responsibility for the contract deliverables who will serve as a primary point of contact with the Department. This individual should have expertise in the field of person-centered practice and planning and familiarity with the requirements of the HCBS rule.
- D. The Contractor should employ staff with experience in:
  1. New York State's Healthcare System and Medicaid Home and Community-Based Services (HCBS) regulation and policy;
  2. Developing and delivering HCBS Rule-compliant person-centered planning and process trainings;
  3. Providing training services in at least two (2) of the following disability service systems: aging/cognitive/physical disabilities, mental/behavioral disabilities, and/or intellectual/ developmental disabilities;
  4. Providing training services in the area of PC practice, planning, and/or thinking;
  5. Conducting focus groups and strategic planning to plan large scale projects involving multiple stakeholder types; and
  6. Providing education and assistance related to assistive technologies.
- E. The Department reserves the right to approve or deny any of the Contractor's proposed staff members for this project.

### 4.3 Reporting

- A. The Contractor shall submit the following reporting to the Department within 30 days of the conclusion of each Learning Institute:
  - 1. Training dates and participants;
  - 2. Dates of follow up consultation and participants;
  - 3. Copies of action plans;
  - 4. Final resolution of goals and tasks in the action plans; and
  - 5. Plan for sustainability of PC practice as developed with participants during the conclusion of each institute.
- B. The Contractor shall track and report to the Department on attendance at all Regional Trainings;
  - 1. The reports shall be submitted at the end of the month in which the training was concluded, with the submission of each monthly voucher.
- C. The Contractor shall submit monthly progress reports with the submission of their monthly vouchers. The progress reports must consist of the following:
  - 1. Activity conducted in the voucher month, including training and mentoring conducted and participants;
  - 2. A summary and highlight of significant progress areas and significant barriers;
  - 3. A summary of accomplishments and barriers in each activity area where work was performed;
  - 4. All counts of meetings attended and participants;
  - 5. A breakdown of hours by Title for each program deliverable;
  - 6. A breakdown of work done by subcontractors; and
  - 7. A summary of any updates or changes.
- D. The Contractor shall submit an evaluation of training methods and content, and report of trained individuals.
  - 1. The report shall be submitted on a quarterly basis for the duration of the contract term;
  - 2. At a minimum, this report must consist of the following:
    - a. Outline of major question topics and/or areas of concern and requests for assistance;
    - b. Summary of all trainings and Learning Institutes conducted in each New York State region; and
    - c. A report on success of training methods and content used with recommendations on changes to be implemented for the next quarter.
- E. The Contractor shall develop and submit additional reports, as requested by the Department, for a variety of audiences.

### 4.5 Transition

- A. The transition represents a period when all services, provided by the Contractor resulting from this RFP, must be turned over to the Department, another Departmental agency, or its designee during or at the end of the contract.
- B. The Contractor shall ensure that any transition to DOH or its designee be done in a way that provides the Department with uninterrupted services. This includes a complete and total transfer of all files, reports, and records necessary to perform such services.
- C. The Contractor will develop an organized work plan and timeline in order to ensure all current and future related services during the transition period are addressed and completed. All relationships between all other parties involved should be notified of the transition and all changes required to ensure a seamless transition of services between Contractors and/or the Department.
- D. The Contractor shall manage and maintain the appropriate number of staff to meet all requirements listed in the RFP during transition. All reporting and record requirements, security standards, and performance standards are still in effect during the transition period. Three (3) months prior to the end of the contract period, the Contractor will work with the Department and its designees to ensure a complete, efficient, and successful transition.

## 5.0 ADMINISTRATIVE INFORMATION

The following administrative information will apply to this RFP. Failure to comply fully with this information may result in disqualification of your proposal.

### 5.1 Restricted Period

“Restricted period” means the period of time commencing with the earliest written notice, advertisement, or solicitation of a Request for Proposals (“RFP”), Invitation for Bids (“IFB”), or solicitation of proposals, or any other method for soliciting a response from Bidders intending to result in a procurement contract with DOH and ending with the final contract award and approval by DOH and, where applicable, final contract approval by the Office of the State Comptroller.

This prohibition applies to any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence this procurement. Violation of any of the requirements described in this Section may be grounds for a determination that the bidder is non-responsible and therefore ineligible for this contract award. Two violations within four years of the rules against impermissible contacts during the “restricted period” may result in the violator being debarred from participating in DOH procurements for a period of four years.

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies a designated contact on face page of this RFP to whom all communications attempting to influence this procurement must be made.

### 5.2 Questions

There will be an opportunity available for submission of written questions and requests for clarification with regard to this RFP. All questions and requests for clarification of this RFP should cite the particular RFP Section and paragraph number where applicable and must be submitted via email to [OHIPContracts@health.ny.gov](mailto:OHIPContracts@health.ny.gov). It is the bidder’s responsibility to ensure that email containing written questions and/or requests for clarification is received at the above address no later than the Deadline for Submission of Written Questions as specified in [Section 1.0](#) (Calendar of Events). Questions received after the deadline may **not** be answered.

### 5.3 Right to Modify RFP

DOH reserves the right to modify any part of this RFP, including but not limited to, the date and time by which proposals must be submitted and received by DOH, at any time prior to the Deadline for Submission of Proposals listed in [Section 1.0](#) (Calendar of Events). Modifications to this RFP shall be made by issuance of amendments and/or addenda.

Prior to the Deadline for Submission of Proposals, any such clarifications or modifications as deemed necessary by DOH will be posted to the DOH website.

If the bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Bidder shall immediately notify DOH of such error in writing at [OHIPContracts@health.ny.gov](mailto:OHIPContracts@health.ny.gov) and request clarification or modification of the document.

If, prior to the Deadline for Submission of Proposals, a bidder fails to notify DOH of a known error or an error that reasonably should have been known, the bidder shall assume the risk of proposing. If awarded the contract, the bidder shall not be entitled to additional compensation by reason of the error or its correction.

### 5.4 Payment

The contractor shall submit invoices and/or vouchers to the State’s designated payment office:

Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [AccountsPayable@ogs.ny.gov](mailto:AccountsPayable@ogs.ny.gov) with a subject field as follows:

Subject: **Unit ID: 3450445 Contract # TBD:**

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

**NYS Department of Health  
Unit ID 3450445  
c/o NYS OGS BSC Accounts Payable  
Building 5, 5th Floor  
1220 Washington Ave.  
Albany, NY 12226-1900**

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epayments@osc.state.ny.us](mailto: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, 9<sup>th</sup> 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 based upon the proposed Deliverable Price Per Unit prices in the bidder's Attachment C: Cost Proposal. Invoices should be submitted monthly with documentation to sufficiently substantiate the billing invoices.

The Contractor's deliverable prices are to be all-inclusive of costs, including but not limited to: materials, reporting, equipment, travel, location rentals, profit, and labor. The Contractor will not be reimbursed for any cost incurred outside of the pricing provided in their Attachment C: Cost Proposal.

To receive payment, the Contractor(s) must include the following applicable items with their monthly invoices:

- Identification of each deliverable completed within the service dates of the invoice;
- Appropriate supporting documentation for each deliverable completed; and
- Identification of any submitted report to the Department, within the service dates of the invoice.

If the Department elects to exercise its one (1) year renewal option, the Contractor will be held to the Deliverable Price Per Unit prices provided in their Attachment C: Cost Proposal during the renewal period.

## **5.5 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 F, 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 10<sup>th</sup> 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



[OHIPContracts@health.ny.gov](mailto:OHIPContracts@health.ny.gov) before the Deadline for Questions as specified in [Section 1.0](#) (Calendar of Events). 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.**

## **5.6 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 E 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 E.

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 F, 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 F, Form # 5), to DOH with their bid or proposal.

## **5.7 Sales and Compensating Use Tax Certification (Tax Law, § 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.

The successful Bidder must file a properly completed Form ST-220-CA with the Department of Health and Form ST-220-TD with the DTF. These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance's website, available through this link: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

Forms are available through these links:

- ST-220 CA: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)
- ST-220 TD: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

## 5.8 Workers' Compensation and Disability Benefits Certifications

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that DOH shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with DOH, successful Bidders will be required to verify for DOH, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to provide verification of either of these types of insurance coverage by the time contracts are ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

The successful Bidder must submit the following documentation to the Department within 10 calendar days of notification of award.

ONE of the following forms as Workers' Compensation documentation:

A. Proof of Workers' Compensation Coverage:

1. **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or
2. **Form SI-12** – Certificate of Workers' Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance); or
3. **Form CE-200** – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

B. Proof of Disability Benefits Coverage:

ONE of the following forms as Disability documentation:

1. **Form DB-120.1** – Certificate of Disability Benefits Insurance; or
2. **Form DB-155** – Certificate of Disability Benefits Self-Insurance; or
3. **Form CE-200** – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

Further information is available at the Workers' Compensation Board's website, which can be accessed through this link: <http://www.wcb.ny.gov>.

## 5.9 Subcontracting

Bidder's may propose the use of a subcontractor. The Contractor shall obtain prior written approval from NYSDOH before entering into an agreement for services to be provided by a subcontractor. The Contractor is solely responsible for assuring that the requirements of the RFP are met. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of the prime contract, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the agreement between the DOH and the Contractor. DOH reserves the right to request removal of any bidder's staff or subcontractor's staff if, in DOH's discretion, such staff is not performing in accordance with the Agreement. Subcontractors whose contracts are valued at or above \$100,000 will be required to submit the Vendor Responsibility Questionnaire upon selection of the prime contractor.

## 5.10 DOH's Reserved Rights

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 Department 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.

### 5.11 Freedom of Information Law ("FOIL")

All proposals may be disclosed or used by DOH to the extent permitted by law. DOH may disclose a proposal to any person for the purpose of assisting in evaluating the proposal or for any other lawful purpose. All proposals will become State agency records, which will be available to the public in accordance with the Freedom of Information Law. **Any portion of the proposal that a Bidder believes constitutes proprietary information entitled to confidential handling, as an exception to the Freedom of Information Law, must be clearly and specifically designated in the proposal as directed in [Section 6.1 \(D\)](#) of the RFP.** If DOH agrees with the proprietary claim, the designated portion of the proposal will be withheld from public disclosure. Blanket assertions of proprietary material will not be accepted, and failure to specifically designate proprietary material may be deemed a waiver of any right to confidential handling of such material.

### 5.12 Lobbying

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, made significant changes as it pertains to development of procurement contracts with governmental entities. The changes included:

- a) made 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) required 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) required 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) authorized the New York State Commission on Public Integrity, (now New York State Joint Commission on Public Ethics), 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) directed 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) required the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment; (Bidders responding to this RFP should submit a completed and signed [Attachment G](#), "Prior Non-Responsibility Determination".)
- g) increased the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- h) established the Advisory Council on Procurement Lobbying.

Subsequently, Chapter 14 of the Laws of 2007 amended the Lobbying Act of the Legislative Law, particularly as it related to specific aspects of procurements as follows: (i) prohibiting lobbyists from entering into retainer agreements on the outcome of government grant making or other agreement involving public funding; and (ii) reporting lobbying efforts for grants, loans and other disbursements of public funds over \$15,000.

The most notable, however, was the increased penalties provided under Section 20 of Chapter 14 of the Laws of 2007, which replaced old penalty provisions and the addition of a suspension option for lobbyists engaged in repeated violations. Further amendments to the Lobbying Act were made in Chapter 4 of the Laws of 2010.

Questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Joint Commission on Public Ethics.

### **5.13 State Finance Law Consultant Disclosure Provisions**

In accordance with New York State Finance Law Section 163(4)(g), State agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract.

The successful bidder 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.

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

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at: <http://www.osc.state.ny.us/agencies/forms/ac3271s.doc> and <http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>.

### **5.14 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.

### **5.15 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/>

## **5.16 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 (currently found at this address:

<http://www.ogs.ny.gov/about/regs/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 DOH receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, DOH 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 DOH 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. DOH 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.

## **5.17 Piggybacking**

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.ny.gov/purchase/snt/sflxi.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.

## **5.18 Encouraging Use of New York Businesses in Contract Performance**

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

## **5.19 Diversity Practices Questionnaire**

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBES”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

## **6.0 PROPOSAL CONTENT**

The following includes the requested format and information to be provided by each Bidder. Bidders responding to this RFP must satisfy all requirements stated in this RFP. All Bidders are to submit complete Administrative, Technical, and Cost proposals. A proposal that is incomplete in any material respect may be rejected.

To expedite review of the proposals, Bidders are requested to submit proposals in separate Administrative, Technical, and Cost packages inclusive of all materials as summarized in Attachment B, Proposal Documents. This separation of information will facilitate the review of the material requested. No information beyond that specifically requested is required, and Bidders are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications. Evaluations of the Administrative, Technical, and



Cost Proposals received in response to this RFP will be conducted separately. Bidders are therefore cautioned not to include any Cost Proposal information in the Technical Proposal documents.

**DOH will not be responsible for expenses incurred in preparing and submitting the Administrative, Technical, or Cost Proposals. Such costs should not be included in the Proposal.**

## 6.1 Administrative Proposal

The Administrative Proposal should contain all items listed below. A proposal that is incomplete in any material respect may be eliminated from consideration. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP may be subject to verification for accuracy. Please provide the forms in the same order in which they are requested.

A. M/WBE Forms

Submit completed Form #1 and/or Form #2, Form #4 and Form #5 as directed in [Attachment E](#), "Guide to New York State DOH M/WBE RFP Required Forms."

B. Bidder's Disclosure of Prior Non-Responsibility Determinations

Submit a completed and signed [Attachment G](#), "Prior Non-Responsibility Determination."

C. Vendor Responsibility Questionnaire

Complete, certify, and file a New York State Vendor Responsibility Questionnaire. DOH recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions at [www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website, [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep), or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form. Bidder's should complete and submit the Vendor Responsibility Attestation, [Attachment J](#).

D. Freedom of Information Law – Proposal Redactions

Bidders must clearly and specifically identify any portion of the proposal that a Bidder believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law. See [Section 4.10](#), (Freedom of Information Law)

E. Bidder's Certified Statements

Submit [Attachment A](#), "Bidder's Certified Statements", which includes information regarding the Bidder. Attachment A must be signed by an individual authorized to bind the Bidder contractually. Please indicate the title or position that the signer holds with the Bidder. DOH reserves the right to reject a proposal that contains an incomplete or unsigned Attachment A or no Attachment A.

F. Encouraging Use of New York Businesses in Contract Performance

Submit [Attachment H](#), "Encouraging Use of New York State Businesses" in Contract Performance to indicate which New York Businesses you will use in the performance of the contract.

G. Provide references using [Attachment D](#), (References) for three similar projects. Provide firm names, addresses, contact names, telephone numbers, and email addresses.

H. Diversity Practices Questionnaire

The Department has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement should include as part of their response, [Attachment K](#), "Diversity Practices Questionnaire". **Responses to the questionnaire will be formally scored and evaluated.**

I. Conflict of Interest or Detrimental Effect

Submit [Attachment L](#), Vendor's Assurance of No Conflict of Interest or Detrimental Effect, which includes information regarding the Bidder, members, shareholders, parents, affiliates or subcontractors. Attachment L must be signed by an individual authorized to bind the Bidder contractually.

## 6.2 Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Bidder to perform the services contained in this RFP. The Technical Proposal should demonstrate the qualifications of the Bidder and of the staff to be assigned to provide services related to the services included in this RFP.

A Technical Proposal that is incomplete in any material respect may be eliminated from consideration. The following outlines the information to be provided by Bidders. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy.

While additional data may be presented, the following should be included. Please provide the information in the same order in which it is requested. Your proposal should contain sufficient information to assure DOH of its accuracy. Failure to follow these instructions may result in disqualification.

Pricing information contained in the Cost Proposal must not be included in the Technical Proposal documents.

A. Title Page

Submit a Title Page providing the RFP subject and number; the Bidder's name and address; the name, address, telephone number, and email address of the Bidder's contact person; and the date of the Proposal.

B. Table of Contents

The Table of Contents should clearly identify all material (by section and page number) included in the proposal.

C. Documentation of Bidder's Eligibility Responsive to Section 3.0 of RFP

- a. Bidders should clearly identify timeframes and related projects that demonstrate the Bidder's ability to meet the Minimum Qualifications below:
  - i. Bidder must have at least three (3) years' experience with delivering a large city, state or federal level training program to professional;
  - ii. Bidder must have at least three (3) years' experience with outcome monitoring, reporting, and quality assurance of a large city, state or federal level training program;
  - iii. Bidder must have at least two (2) years' experience with development and implementation of a large city, state or federal level training initiative;
  - iv. Bidder must have at least one (1) year experience in the area of PC practice, planning, and/or

- thinking; and
  - v. Bidder must have at least one (1) year experience in providing training, technical assistance, and/or policy development in at least one (1) of the following three (3) disability service systems:
    - o aging/cognitive/physical disabilities,
    - o mental/behavioral disabilities, or
    - o developmental disabilities.
- b. Preference will be given to Bidder's who can identify timeframes and related projects for which they have at least:
- i. Three (3) years' experience delivering learning institutes (training mechanisms that promote change needed at the systems level) and supporting the development of learning organizations, or organizations that operate in a manner that embraces critical thinking and reflection in search of creative solutions;
  - ii. Two (2) years' experience providing large city, state or federal level training services related to Person-Centered practice, planning, and/or thinking; and
  - iii. One (1) year experience developing Person-Centered Planning templates for any impacted population's service systems.

#### D. Technical Proposal Narrative

The technical proposal should provide a complete description of the bidder's capabilities to perform the services required by this RFP. Bidders should provide a narrative as outlined below:

##### a. Staffing and Personnel

- i. Provide a summary of how the bidder's staff will be trained to ensure that all staff assigned to this contract will have the appropriately competencies, including any specialized training and/or protocols that will be utilized;
- ii. Provide a Staffing Plan that includes an organizational chart delineating the titles of the staff responsible for fulfilling program requirements, their lines of communications and location(s) where they will be assigned;
- iii. Describe how the bidder plans to recruit and/or maintain a sufficient number of staff to ensure the bidder meets all required timeframes and deliverables as stated in the RFP;
- iv. Describe how the bidder plans to recruit and/or maintain staff with experience in:
  1. New York State's Healthcare System and Medicaid Home and Community-Based Services (HCBS) policy;
  2. Developing and delivering HCBS Rule-compliant person-centered planning and process trainings;
  3. Providing training services in the following disability service systems: aging/cognitive/physical disabilities, mental/behavioral disabilities, and/or intellectual/developmental disabilities;
  4. Providing training services in the area of PC practice, planning, and/or thinking;
  5. Conducting focus groups and strategic planning to plan large scale projects involving multiple stakeholder types; and
  6. Providing education and assistance related to assistive technologies.
- v. Describe the proposed Project Director's project management skills, expertise in the field of person-centered practice and planning, and familiarity with the requirements of the HCBS rule.

##### b. Project Implementation

- i. Person-Centered Practice Toolkit/Resource Library:
  1. Describe the bidder's plan to develop and deliver HCBS compliant materials to be included in a Person-Centered Practice Toolkit/Resource Library (Toolkit);
  2. Describe the Toolkit's planned contents, including resources, policies, best practices and examples, checklists, templates, planning and practice tools, and recorded webinars;
  3. Describe how the materials will be made accessible for those with disabilities, such as potential age-related visual impairments or limited literacy skills;
  4. Describe the bidder's planned method for developing a PC planning template that will contain



- all the necessary language required to be present in the PC plans of all HCBS recipients under covered authorities in New York State;
5. Describe how the materials will facilitate successful utilization of assistive technology to promote independence and autonomy in residential and non-residential settings, including, but not limited to, innovative uses of both high and low technology items;
  6. Describe how the bidder intends to organize the materials; and
  7. Describe the bidder's process for updating the materials.
- ii. Leadership Meeting
1. Describe the bidder's plan to present to the HCBS Rule Interagency Work Group a high-level overview of the initiative described in this RFP and best practices around PC practice to strengthen the strategic implementation of the initiative; and
  2. Describe how the bidder plans to keep the Work Group apprised of its progress during the implementation of the Initiative.
- iii. Learning Institutes
1. Describe the bidder's plan to develop and deliver the training curriculum, including but not limited to addressing the items referenced in Section 4.1.D.1.a of this RFP and creating all related ancillary training materials for classroom, workshop, and on-site training;
  2. Describe how the curriculum will facilitate the creation of "Innovation Directors" or leadership within provider organizations who facilitate and support innovation in PC Practice within their organizations;
  3. Describe the adult learning principles and teaching methodologies and modalities that will be proposed to effectively deliver the training content to groups of diverse audience members, including but not limited to agency and plan managers; staff involved in service-planning, service delivery, and direct-care; plan care managers; and individuals receiving Medicaid-funded HCBS and their circles of support;
  4. Describe how the bidder will effectively address logistical needs of the training delivery, including but not limited to participant recruitment and registration, arranging venues and necessary technology, and the coordination, reproduction, and distribution of all training materials to effectively deliver training programs;
  5. Include a description of how it will structure and conduct each Learning Institute, inclusive of all the activities to take place over the 5-6-month period (as outlined in Section 4.1.D.2 of this RFP);
  6. Describe its process for the development of action plan(s), including goals and activities to guide participant implementation and Contractor consultation/mentoring during the period of the Learning Institute (5-6 months);
  7. Describe its plan for follow-up consultation/mentoring with the participants of each Learning Institute, including but not limited to frequency, modality, and content, to create meaningful support for the growth and development of participants as "Innovation Directors" and implementation of PC practice throughout the period of the Learning Institute;
  8. Describe how the Learning Institutes will result in a sustainability plan for each participant organization to support the continued improvement on the goals achieved in the organization's implementation of PC Practice beyond the period of the Learning Institute;
  9. Describe its plan to promote, through the training and mentoring activities, the use of assistive technology to increase independence and autonomy in residential and non-residential settings, including, but not limited to, innovative uses of both high and low technology items;
  10. Describe how it will ensure that the required number and geographical spread of Learning Institutes are conducted;
  11. Describe its process for updating the Learning Institute training outline, curriculum, and/or ancillary materials, as needed and/or directed by the Department throughout the term of this Initiative.
- iv. Regional Trainings
1. Describe the bidder's plan to develop and deliver four (4) regional training curricula (Person-Centered Practice for Managers; Person-Centered Thinking Train-The-Trainer; Person-Centered Plan Development; and Person-Centered Plan Implementation), including but not

limited to addressing the items referenced in Section 4.1.E.1.a of this RFP and creating all related ancillary training materials for in-person and webinar-based training;

2. Describe the adult learning principles and teaching methodologies and modalities that will be proposed to effectively deliver the training content to diverse groups of audiences, including but not limited to agency and plan management, staff involved in service planning, service delivery, and direct care, plan care managers, and individuals receiving Medicaid-funded HCBS and their circles of support;
3. Describe the bidder's plan to develop content that is comprehensive, high quality, interactive, represents best practices in PC Practice, and supports the sustainability of best practices;
4. Describe how information will be included in the curriculum about the use of assistive technology to increase independence and autonomy, including but not limited to innovative uses of both high and low technology items;
5. Identify the number of participants to be trained per Regional training and justify how this number is adequate;
6. Describe how the bidder will effectively address logistical needs of the training delivery, including but not limited to participant recruitment and registration, arranging venues and necessary technology, and the coordination, reproduction, and distribution of all training materials to effectively deliver training programs;
7. Describe the bidder's plan to conduct the regional trainings identified below, including but not limited to addressing the items referenced in the RFP Sections cited in parentheses following each training topic:
  - a. Person-Centered Practice for Managers (Section 4.1.E.2.h.i);
  - b. Person-Centered Thinking Train-The-Trainer (Section 4.1.E.2.h.ii);
  - c. Person-Centered Plan Development (Section 4.1.E.2.h.iii); and
  - d. Person-Centered Plan Implementation (Section 4.1.E.2.h.iv);
8. Describe how the bidder will ensure that the required number and geographical spread of Regional Trainings are conducted; and
9. Describe the bidder's process for updating the Regional training outline(s), curricula, and/or ancillary materials, as needed and/or directed by the Department throughout the term of this Initiative.

c. Project Reporting

- i. Describe the bidder's plan for creating and submitting the required monthly, quarterly, and periodic reports as specified in Section 4.3 of this RFP, and for ensuring the timeliness, accuracy and comprehensiveness of these reports; and
- ii. Describe its capacity for responding to requests by the Department for ad-hoc reporting for a variety of audiences as needed by the Department.

### 6.3 Cost Proposal

Submit a completed and signed [Attachment C – Cost Proposal](#). The Cost Proposal shall comply with the format and content requirements as detailed in this document and in Attachment C. Failure to comply with the format and content requirements may result in disqualification.

The bid price is to cover the cost of furnishing all of the said services, including but not limited to materials, reporting, equipment, travel, location rentals, profit and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.

To complete the Cost Proposal, Bidders must provide a Deliverable Price Per Unit price for each deliverable, as outlined in Attachment C: Cost Proposal. Deliverable prices are to be all-inclusive. The Contractor will not be reimbursed for any costs incurred outside of the prices provided in its Attachment C: Cost Proposal.

If the Department elects to exercise its one (1) year renewal option, the Contractor will be held to the Deliverable Price Per Unit prices provided in their Attachment C: Cost Proposal during the renewal period.

## 7.0 PROPOSAL SUBMISSION

A proposal consists of three distinct parts: (1) the Administrative Proposal, (2) the Technical Proposal, and (3) the Cost Proposal. The table below outlines the required format and volume for submission of each part. Proposals should be submitted in all formats as prescribed below.

	Electronic Submission	Paper Submission
<b>Administrative Proposal</b>	2 dedicated flash drives or CDs labeled "Administrative Proposal" containing a standard searchable PDF file with copy/read permissions only.	4 Originals 6 Copies
<b>Technical Proposal</b>	2 dedicated flash drives or CDs labeled "Technical Proposal" containing a standard searchable PDF file with copy/read permissions only.	4 Originals 6 Copies
<b>Cost Proposal</b>	2 dedicated flash drives or CDs labeled "Cost Proposal" containing standard searchable PDF file(s) with copy/read permissions only.	4 Originals 6 Copies

1. All hard copy proposal materials should be printed on 8.5" x 11" white paper (single-sided) and **be clearly page numbered on the bottom of each page with appropriate header and footer information.** A type size of eleven (11) points or larger should be used. The Technical Proposal materials should be presented separate from the sealed Cost Proposal. The sealed Cost Proposal should also be presented in separate three-ring binder(s);
2. Where signatures are required, the proposals designated as originals should have a handwritten signature and be signed in blue ink.
3. The NYSDOH discourages overly lengthy proposals. Therefore, marketing brochures, user manuals or other materials, beyond that sufficient to present a complete and effective proposal, are not desired. Elaborate artwork or expensive paper is not necessary or desired. In order for the NYSDOH to evaluate proposals fairly and completely, proposals should follow the format described in this RFP to provide all requested information. The Bidder should not repeat information in more than one section of the proposal. If information in one section of the proposal is relevant to a discussion in another section, the Bidder should make specific reference to the other section rather than repeating the information;
4. Audio and/or videotapes are not allowed. Any submitted audio or videotapes will be ignored by the evaluation team; and
5. In the event that a discrepancy is found between the electronic and hardcopy proposal, the original hardcopy will prevail.

**The proposal must be received by the NYSDOH, no later than the Deadline for Submission of Proposals specified in [Section 1.0](#) (Calendar of Events). Late bids will not be considered.**

Proposals should be submitted in three (3) separate, clearly labeled packages: (1) Administrative Proposal, (2) Technical Proposal and (3) Cost Proposal, prepared in accordance with the requirements stated in this RFP. Mark the outside envelope of each proposal as "RFP# 17625 **Person-Centered Planning Comprehensive System Transformation Statewide Training Initiative** – (Administrative) (Technical) or (Cost) Proposal submitted by (Bidder's name)". The three sealed proposals may be combined into one mailing, if desired.

Proposals must be submitted, by U.S. Mail, by courier/delivery service (e.g., FedEx, UPS, etc.) or by hand as noted below, in a sealed package to:

Department of Health (RFP # 17625)  
Attention: Michael Lewandowski, Health Program Administrator  
One Commerce Plaza  
Room 1470  
Albany, NY 12237

NOTE: You should request a receipt containing the time and date received and the signature of the receiver for all hand-deliveries and ask that this information also be written on the package(s).

Submission of proposals in a manner other than as described in these instructions (e.g., fax, electronic transmission) will not be accepted.

## **7.1 No Bid Form**

Bidders choosing not to bid are requested to complete the No-Bid form [Attachment I](#).

## **8.0 METHOD OF AWARD**

### **8.1 General Information**

DOH will evaluate each proposal based on the “Best Value” concept. This means that the proposal that best “optimizes quality, cost, and efficiency among responsive and responsible offerers” shall be selected for award (State Finance Law, Article 11, §163(1)(j)).

DOH at its sole discretion, will determine which proposal(s) best satisfies its requirements. DOH reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. The evaluation process will include separate technical and cost evaluations, and the result of each evaluation shall remain confidential until both evaluations have been completed and a selection of the winning proposal is made.

The evaluation process will be conducted in a comprehensive and impartial manner, as set forth herein, by an Evaluation Committee. The Technical Proposal and compliance with other RFP requirements (other than the Cost Proposal) will be weighted **70%** of a proposal’s total score and the information contained in the Cost Proposal will be weighted **30%** of a proposal’s total score.

Bidders may be requested by DOH to clarify the contents of their proposals. Other than to provide such information as may be requested by DOH, no Bidder will be allowed to alter its proposal or add information after the Deadline for Submission of Proposals listed in [Section 1.0](#) (Calendar of Events).

In the event of a tie, the determining factors for award, in descending order, will be: (1) lowest cost and (2) proposed percentage of MWBE participation.

### **8.2 Submission Review**

DOH will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in [Section 6.0](#) (Proposal Content) and [Section 7.0](#) (Proposal Submission), and include the proper documentation, including all documentation requested for the Administrative Proposal, as stated in this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of DOH, may be rejected.

### **8.3 Technical Evaluation**

The evaluation process will be conducted in a comprehensive and impartial manner. A Technical Evaluation Committee comprised of program staff of DOH will review and evaluate all proposals.

Proposals will undergo a preliminary evaluation to verify Minimum Qualifications to Propose (Section 3.0).

The Technical Evaluation Committee members will independently score each Technical Proposal that meets the submission requirements of this RFP. The individual Committee Member scores will be averaged to calculate the Technical Score for each responsive Bidder.

The technical evaluation is **70% (up to 70 points)** of the final score.

#### **8.4 Cost Evaluation**

The Cost Evaluation Committee will examine the Cost Proposal documents. The Cost Proposals will be opened and reviewed for responsiveness to cost requirements. If a cost proposal is found to be non-responsive, that proposal may not receive a cost score and may be eliminated from consideration.

The Cost Proposals will be scored based on a maximum cost score of 30 points. The maximum cost score will be allocated to the proposal with the lowest all-inclusive not-to-exceed maximum price. All other responsive proposals will receive a proportionate score based on the relation of their Cost Proposal to the proposals offered at the lowest final cost, using this formula:

$$C = (A/B) * 30\%$$

A is Total price of lowest cost proposal;  
B is Total price of cost proposal being scored; and  
C is the Cost score.

The cost evaluation is **30% (up to 30 points)** of the final score.

#### **8.5 Composite Score**

A composite score will be calculated by the DOH by adding the Technical Proposal points and the Cost points awarded. Finalists will be determined based on composite scores.

#### **8.6 Reference Checks**

The Bidder should submit references using [Attachment D](#) (References). At the discretion of the Evaluation Committee, references may be checked at any point during the process to verify bidder qualifications to propose (Section 3.0).

#### **8.7 Best and Final Offers**

NYSDOH reserves the right to request best and final offers. In the event NYSDOH exercises this right, all bidders that submitted a proposal that are susceptible to award will be asked to provide a best and final offer. Bidders will be informed that should they choose not to submit a best and final offer, the offer submitted with their proposal will be construed as their best and final offer.

#### **8.8 Award Recommendation**

The Evaluation Committee will submit a recommendation for award to the Finalist(s) with the highest composite score(s) whose experience and qualifications have been verified.

The Department will notify the awarded Bidder(s) and Bidders not awarded. The awarded Bidder(s) will enter into a written Agreement substantially in accordance with the terms of **Attachment E**, DOH Agreement, to provide the required services as specified in this RFP. The resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller.

## **ATTACHMENTS**

- A Bidder's Certified Statements
- B Proposal Document Checklist
- C Cost Proposal
- D References
- E DOH Agreement
- F Guide to New York State DOH M/WBE Required Forms & Forms
- G Bidder's Disclosure of Prior Non-Responsibility Determination
- H Encouraging Use of New York Businesses in Contract Performance
- I No-Bid Form
- J Vendor Responsibility Attestation
- K Diversity Practices Questionnaire
- L Conflict of Interest or Detrimental Effect
- M Regional Map

**ATTACHMENT A  
 BIDDER'S CERTIFIED STATEMENTS**

To be completed and included in the Administrative Proposal documents)

RFP 17625 – Person-Centered Planning Comprehensive System Transformation Statewide Training Initiative
1. Information with regard to the Bidder
A. Provide the Bidder's name, address, telephone number, and fax number.
Name: <input type="text" value="Click here to enter text."/>
Address: <input type="text" value="Click here to enter text."/>
City, State, ZIP Code: <input type="text" value="Click here to enter text."/>
Telephone Number (including area code): <input type="text" value="Click here to enter text."/>
Fax Number (including area code): <input type="text" value="Click here to enter text."/>
B. Provide the name, address, telephone number, and email address of the Bidder's Primary Contact with DOH with regard to this proposal.
Name: <input type="text" value="Click here to enter text."/>
Address: <input type="text" value="Click here to enter text."/>
City, State, ZIP Code: <input type="text" value="Click here to enter text."/>
Telephone Number (including area code): <input type="text" value="Click here to enter text."/>
Email Address: <input type="text" value="Click here to enter text."/>
2. By submitting the bid the Bidder acknowledges and agrees to all of the following: [Please note: alteration of any language contained in this section may render your proposal non-responsive.]
Bidder certifies that either there is no conflict of interest or that there are business relationships and /or ownership interests for the organization for the above named organization that may represent a conflict of interest for the organization as a bidder and attached to this form is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided.
The Bidder certifies that it can and will provide and make available, at a minimum, all services as described in the RFP if selected for award.
Bidder 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 DOH.
Bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this RFP including any exhibits and attachments.
The bidder is either registered to do business in NYS, or if formed or incorporated in another jurisdiction than NYS, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available, and if selected, the vendor will register to do business in NYS.

<b>A. The Bidder is (check as applicable):</b>
<input type="checkbox"/> A New York State Certified Minority-Owned Business Enterprise <input type="checkbox"/> A New York State Certified Woman-Owned Business Enterprise <input type="checkbox"/> A New York State Certified Minority and Woman-Owned Business Enterprise (Dual Certified) <input type="checkbox"/> None of the above
<b>B. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the contract entered into as a result of this procurement. See Section __ of the DOH Agreement (Attachment E), NOTICES.</b>
Name: Click here to enter text.
Title: Click here to enter text.
Address: Click here to enter text.
City, State, ZIP Code: Click here to enter text.
Telephone Number (including area code): Click here to enter text.
Email Address: Click here to enter text.
<b>C. Bidder's Taxpayer Identification Number:</b>
Click here to enter text.
<b>D. Bidder's NYS Vendor Identification Number as discussed in Section 6.1.F, if enrolled:</b>
Click here to enter text.
<b>By my signature on this Attachment A, I certify to the statements made above in Section 2 and that I am authorized to bind the Bidder contractually. Furthermore, I certify that all information provided in connection with its proposal is true and accurate.</b>
_____
Typed or Printed Name of Authorized Representative of the Bidder
_____
Title/Position of Authorized Representative of the Bidder
_____
Signature of Authorized Representative of the Bidder
_____
Date
_____



**ATTACHMENT B  
PROPOSAL DOCUMENT CHECKLIST**

Please reference Section 7.0 for the appropriate format and quantities for each proposal submission.

<b>RFP 17625 – Person-Centered Planning Comprehensive System Transformation Statewide Training Initiative</b>		
<b>FOR THE ADMINISTRATIVE PROPOSAL</b>		
<b>RFP §</b>	<b>Criteria</b>	<b>INCLUDED</b>
§ 6.1.A	<b>M/WBE Participation Requirements:</b>	<input type="checkbox"/>
	Attachment F Form 1	<input type="checkbox"/>
	Attachment F Form 2 (If Applicable)	<input type="checkbox"/>
	Attachment F Form 4	<input type="checkbox"/>
	Attachment F Form 5	<input type="checkbox"/>
§ 6.1.B	<b>Attachment G – Disclosure of Prior Non-Responsibility Determinations, completed and signed.</b>	<input type="checkbox"/>
§ 6.1.C	<b>Attachment J- Vendor Responsibility Attestation</b>	<input type="checkbox"/>
§ 6.1.D	<b>Freedom of Information Law – Proposal Redactions (If Applicable)</b>	<input type="checkbox"/>
§ 6.1.E	<b>Attachment A - Bidder’s Certified Statements, completed &amp; signed.</b>	<input type="checkbox"/>
§ 6.1.F	<b>Attachment D References</b>	<input type="checkbox"/>
§ 6.1.G	<b>Attachment H- Encouraging Use of New York Businesses in Contract Performance</b>	<input type="checkbox"/>
§ 6.1.H	<b>Attachment K- Diversity Practices Questionnaire</b>	<input type="checkbox"/>
§ 6.1.I	<b>Attachment L- Conflict of Interest or Detrimental Effect</b>	<input type="checkbox"/>
<b>FOR THE TECHNICAL PROPOSAL</b>		
<b>RFP §</b>	<b>Criteria</b>	<b>INCLUDED</b>
§ 6.2.A	<b>Title Page</b>	<input type="checkbox"/>
§ 6.2.B	<b>Table of Contents</b>	<input type="checkbox"/>
§ 6.2.C	<b>Documentation of Bidder’s Eligibility</b>	<input type="checkbox"/>
§ 6.2.D	<b>Technical Proposal Narrative</b>	<input type="checkbox"/>
<b>FOR THE COST PROPOSAL REQUIREMENT</b>		
<b>RFP §</b>	<b>REQUIREMENT</b>	<b>INCLUDED</b>
§ 6.3	<b>Attachment C- Cost Proposal</b>	<input type="checkbox"/>

**ATTACHMENT C  
COST PROPOSAL**

BIDDERS NAME: \_\_\_\_\_

To complete the Cost Proposal, Bidders must provide a Deliverable Price Per Unit price for each deliverable. Deliverable prices are to be all-inclusive to cover the cost of furnishing all of the said services, including but not limited to materials, reporting, equipment, travel, location rentals, profit and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications. The Contractor will not be reimbursed for any costs incurred outside of the prices provided in its Attachment C: Cost Proposal.

For each Deliverable (A), bidder must include an all-inclusive Deliverable Price Per Unit price (C).

A. Deliverable	B. Anticipated Deliverables	C. Deliverable Price Per Unit*
<b>B. Person-Centered Practice Toolkit/Resource Library**:</b>		
Delivery of the PC-Practice Resource Materials	1	
Modification of the PC-Practice Resource Documents	1	
<b>C. Leadership Meetings**:</b>		
Presentation/Meetings with the HCBS Rule Interagency Work Group <i>(Up to Four [4] Per Contract Year)</i>	8	
<b>D. Learning Institutes**:</b>		
Development and Delivery of Learning Institute Training Curriculum	1	
Modification and Delivery of Learning Institute Training Curriculum <i>(up to Four [4] Per Contract Year)</i>	8	
Delivery of Learning Institutes <i>(At least six [6] Per Contract Year)</i>	12	
Delivery of Learning Institute Mentoring Activities and Submission of Learning Institute Final Report <i>(At least Six [6] Per Contract Year)</i>	12	
<b>E. Regional Trainings**:</b>		
Development and Delivery of the Regional Trainings Curricula	4	
Modification and Delivery of the Regional Trainings Curricula <i>(up to Sixteen [16] Total Per Contract Year)</i>	32	
Delivery of In-Person Regional Trainings: Person-Centered Practice for Managers <i>(Fourteen [14] Per Contract Year)</i>	28	
Delivery of Webinar-Based Regional Trainings: Person-Centered Practice for Managers <i>(One [1] Per Contract Year)</i>	2	
Delivery of In-Person Regional Trainings: Person-Centered Thinking Train-The-Trainer <i>(Fourteen [14] Per Contract Year)</i>	28	
Delivery of Webinar-Based Regional Trainings: Person-Centered Thinking Train-The-Trainer <i>(One [1] Per Contract Year)</i>	2	

A. Deliverable	B. Anticipated Deliverables	C. Deliverable Price Per Unit*
Delivery of In-Person Regional Trainings: Person-Centered Plan Development <i>(29 Per Contract Year)</i>	<b>58</b>	
Delivery of Webinar-Based Regional Trainings: Person-Centered Plan Development <i>(One [1] Per Contract Year)</i>	<b>2</b>	
Delivery of In-Person Regional Trainings: Person-Centered Plan Implementation <i>(29 Per Contract Year)</i>	<b>58</b>	
Delivery of Webinar-Based Regional Trainings: Person-Centered Plan Implementation <i>(One [1] Per Contract Year)</i>	<b>2</b>	

\*If the Department elects to exercise its one (1) year renewal option, the Contractor will be held to the Deliverable Price Per Unit prices provided in their Attachment C: Cost Proposal during the renewal period.

\*\*This is a deliverable heading only. Bidders should not provide a pricing in this row.

By signing this Cost Proposal Form, bidder agrees that the prices above are binding for 365 days from the proposal due date.

\_\_\_\_\_  
Bidder's Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

**ATTACHMENT D  
REFERENCES**

Submit a total of THREE references (Section 6.0.F) using this form.

Expand fields and duplicate this page as necessary.

<b>RFP #17625 – Person-Centered Planning Comprehensive System Transformation Statewide Training Initiative</b>	
<b>BIDDER:</b>	
<b>Provide the following information for each reference submitted. Fields will expand as you type.</b>	
<b>Reference Company #1:</b>	Click here to enter text.
<b>Contact Person:</b>	Click here to enter text.
<b>Address:</b>	Click here to enter text.
<b>City, State, Zip:</b>	Click here to enter text.
<b>Telephone Number:</b>	Click here to enter text.
<b>Email Address:</b>	Click here to enter text.
<b>Number of years Bidder provided services to this entity:</b>	Click here to enter text.
<b>Brief description of the services provided:</b>	Click here to enter text.
<b>Reference Company #2:</b>	Click here to enter text.
<b>Contact Person:</b>	Click here to enter text.
<b>Address:</b>	Click here to enter text.
<b>City, State, Zip:</b>	Click here to enter text.
<b>Telephone Number:</b>	Click here to enter text.
<b>Email Address:</b>	Click here to enter text.
<b>Number of years Bidder provided services to this entity:</b>	Click here to enter text.
<b>Brief description of the services provided:</b>	Click here to enter text.
<b>Reference Company #3:</b>	Click here to enter text.
<b>Contact Person:</b>	Click here to enter text.
<b>Address:</b>	Click here to enter text.
<b>City, State, Zip:</b>	Click here to enter text.
<b>Telephone Number:</b>	Click here to enter text.
<b>Email Address:</b>	Click here to enter text.
<b>Number of years Bidder provided services to this entity:</b>	Click here to enter text.
<b>Brief description of the services provided:</b>	Click here to enter text.

**ATTACHMENT E  
DOH AGREEMENT**

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

NYS COMPTROLLER'S NUMBER: C#  
  
ORIGINATING AGENCY GLBU: DOH01  
DEPARTMENT ID: 345XXXX (Use unit ID)

\_\_\_\_\_  
CONTRACTOR (Name and Address):

\_\_\_\_\_  
TYPE OF PROGRAM(S):

\_\_\_\_\_  
CHARITIES REGISTRATION NUMBER:

\_\_\_\_\_  
CONTRACT TERM

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

FROM:  
TO:  
  
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  
NY 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.

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

\_\_\_\_\_  
CONTRACTOR

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

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

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

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

\_\_\_\_\_  
STATE AGENCY

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

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

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

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

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

\_\_\_\_\_  
STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_) SS.:

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

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

**ATTORNEY GENERAL'S SIGNATURE**

\_\_\_\_\_

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

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

**STATE COMPTROLLER'S SIGNATURE**

\_\_\_\_\_

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

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

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

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

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

provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 4 January 2014 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, STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 5 January 2014 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, upgrading, 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. 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

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. STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 6 January 2014.

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](mailto: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](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any

such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 7 January 2014

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

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

During the term of the Contract, should the state agency receive information that a person (as defined

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

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

**APPENDIX X**

**MODIFICATION AGREEMENT FORM** (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

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), having its mailing address at \_\_\_\_\_, for amendment of this contract.

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

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

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

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

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

Prior to this amendment, the contract value and period were:  
\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Value before amendment) (Initial start date)

This amendment provides the following modification (complete only items being modified):  
\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_

This will result in new contract terms of:  
\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(All years thus far combined) (Initial start date) (Amendment end date)

SIGNATURE PAGE FOR:

Contract Number: \_\_\_\_\_ Contractor: \_\_\_\_\_

Amendment Number: X-\_\_\_\_\_ BSC Unit ID: 345<XXXX>

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

**CONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
(Signature)

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

Printed Name: \_\_\_\_\_

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

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_) SS.:

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

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

**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: \_\_\_\_\_  
(Signature)

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

Printed Name: \_\_\_\_\_

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

**ATTORNEY GENERAL'S SIGNATURE**

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

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

**STATE COMPTROLLER'S SIGNATURE**

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

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

## STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

### I. Conditions of Agreement

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

### II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:
  - 1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [DOHaccounts payable@ogs.ny.gov](mailto:DOHaccounts payable@ogs.ny.gov) with a subject field as follows:  
Subject: <<Unit ID: 345XXXX>> <<Contract #>>  
(Note: do not send a paper copy in addition to your emailed voucher.)
  - 2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:  
NYS Department of Health  
Unit ID 345<<xxxx>>



PO Box 2093  
Albany, NY 12220-0093

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

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

1. 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
  2. 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.

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:
  - 1. 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;
  - 2. 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;

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

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

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

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

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

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

N. Date/Time Warranty

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

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

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

2. Date/Time Warranty Statement

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

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

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

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

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

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

- T. Provisions upon Default
  - 1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor.
  - 2. If, in the judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.
- U. Upon termination of this agreement, the following shall occur:
  - 1. Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
  - 2. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.
- V. Conflicts: If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. Contract Insurance Requirements

- 1. The successful Bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the

State of New York covering all operations under this proposal and the contract, whether performed by it or by subContractors. Before commencing the work, the successful Bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:

- a. A policy covering the obligations of the successful Bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful Bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
  - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
    - i. Contractor's Liability Insurance issued to and covering the liability of the successful Bidder with respect to all work performed by it under this proposal and the contract.
    - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful Bidder or by its subContractors, including omissions and supervisory acts of the State.
    - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful Bidder or by its subContractors, including omissions and supervisory acts of the State.
- X. Certification Regarding Debarment and Suspension: Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

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

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

Instructions for Certification

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

#### FF. CONFLICTS OF INTEREST

1. The CONTRACTOR has provided a form (Exhibit A, Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.

2. The CONTRACTOR hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

3. In conjunction with any subcontract under this AGREEMENT, the CONTRACTOR shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

4. The STATE and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The STATE will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the STATE, a real or potential conflict of interest cannot be cured.

#### GG. PUBLIC OFFICERS LAW

However, as a general rule, the contractor shall be informed that in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

#### HH. ETHICS REQUIREMENTS

The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or

policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor, by signing the Contract, certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

## II. SUBCONTRACTING

The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the STATE. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the STATE. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the STATE. As part of this explanation, the subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONTRACTOR prior to execution of this AGREEMENT.

The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT. All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts and Appendix B. Unless waived in writing by the STATE, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the STATE and the Department of Health, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Department of Health the STATE a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONTRACTOR and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this AGREEMENT.

The CONTRACTOR shall give the STATE immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the CONTRACTOR's duties under the AGREEMENT. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

## **APPENDIX F**

### **SOFTWARE AS A SERVICE (SAAS) TERMS AND CONDITIONS**

#### A. General Requirements

Contractor agrees that it shall perform the Software as a Services (SaaS) in a manner consistent with the following requirements:

1. Host all Department Data and maintain and implement procedures to physically and logically segregate Department's Data from Contractor's data and data belonging to Contractor's other customers.
2. Establish and maintain appropriate environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, corruption, loss or alteration of the hosting Services and any Department Data, and to prevent unauthorized access, alteration or interference by third parties of the same.
3. Utilize industry best practices and technology (including appropriate firewall protection, intrusion prevention tools, and intrusion detection tools) to protect, safeguard, and secure the System and Department Data against unauthorized access, use, and disclosure. Contractor shall constantly monitor for any attempted unauthorized access to, or use or disclosure of, any of such materials and shall immediately take all necessary and appropriate action in the event any such attempt is discovered, promptly notifying the ITS EISO of any material or significant breach of security with respect to any such materials.
4. When software vulnerabilities are revealed and addressed by a vendor patch, Contractor will obtain the patch from the applicable vendor and categorize the urgency of application as either "critical" or "non-critical" in nature. The determination of the critical versus non-critical nature of patches is solely at the reasonable discretion of Contractor in consultation with ITS EISO. Contractor will apply all critical security patches, hot fixes, or service packs as they are tested and determined safe for installation.

#### B. Data Location and Related Restrictions

All Data shall remain in the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS.

#### C. Support Services

All helpdesk, online, and support services which access any Data must be performed from within CONUS.

#### D. Contractor Portable Devices

Contractor shall not place Data on any portable Device unless Device is located and remains within Contractor's CONUS Data Center.

#### E. Data Breach - Required Contractor Actions

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

1. Notify the ITS EISO and any potentially affected Department or their designated contact person(s), by telephone as soon as possible.
2. Consult with and receive authorization from the Department as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the Department;

3. Coordinate all communication regarding the Data Breach with the ITS EISO and the Department;
4. Cooperate with the Department and ITS EISO in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
5. Take corrective action in the timeframe required by the Department. If Contractor is unable complete the corrective action within the required timeframe the Department may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the Department, or until the Department has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period. Nothing herein shall in any way (a) impair the authority of the OAG to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

F. Data Ownership

The Department shall own all right, title and interest in Data.

G. Department Access to Data

The Department shall have access to its Data at all times, through the term of this Contract. The Department shall have the ability to import or export Data in piecemeal or in its entirety at the Department's discretion, without interference from the Contractor. This includes the ability for the Department to import or export Data to/from other Contractors.

H. Contractor Access to Data

The Contractor shall not copy or transfer Data unless authorized by the Department. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any Data for any purpose other than fulfilling the service. Contractor is prohibited from Data Mining, cross tabulating, monitoring Department's Data usage and/or access, or performing any other Data Analytics other than those required under this contract. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Department be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to the Department upon request.

I. Suspension of Services

During any period of suspension of service, the Department shall have full access to all Data at no charge. The Contractor shall not take any action to erase and/or withhold any Department Data, except as directed by the Department.

J. Transferring of Data

The Contractor will not transfer Data unless directed to do so in writing by the Department. At the request of the Department, the Contractor will provide the services required to transfer Data from existing Databases to physical storage devices, to facilitate movement of large volumes of Data.

K. Requests for Data by Third Parties

Unless prohibited by law, Contractor shall notify the Department in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than the Department, and the Contractor shall secure written acknowledgement of such notification from the Department before responding to the request for Data. Unless compelled by law, the Contractor shall not release Data without the Department's prior written approval.

L. Transfer of Data at End of Contract

At the end of the Contract, Contractor may be required to transfer Data to a new Contractor and/or to the Department. This transfer must be carried out as specified by the Department. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats

M. Transfer of Data; Contract Breach or Termination

In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Contractor.

N. Expiration or Termination of Services

Upon expiration or termination of this Contract, the Department shall have full access to all Data for a period of 90 calendar days at no charge. During this period, the Contractor shall not take any action to erase and/or withhold any Data, except as directed by the Department.

O. Return of Data

Upon expiration or termination of this Contract, the Contractor shall return Data in a format required by the Department. When requested by the Department, the Contractor must certify that all Data has been removed from its system and removed from backups.

P. Secure Data Disposal

If requested by the Department, the Contractor shall destroy Data in all of its forms, including all backups. Data shall be permanently deleted and shall not be recoverable, according to ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of destruction, in a form acceptable to the Department, shall be provided by the Contractor to the Department.

Q. Destruction of Data

The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Contractor is no longer contractually required to store the Data.

R. Background Checks

The Department may require the Contractor to conduct background checks on certain Contractor staff at no charge to the Department.

S. Separation of Duties

The Department may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.

T. Business Continuity/Disaster Recovery Operations

The Contractor shall provide and implement a business continuity and disaster recovery plan in accordance with the requirements of the RFP and approved by the New York State Office for Information Technology Services.

U. Compliance with Federal, State and Local Regulations

The Department may require the Contractor to provide verification of compliance with specific federal, State and  
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local regulations, laws and information technology standards with which the Department is required to comply.

#### V. WARRANTIES

1. **Software Performance.** Contractor hereby warrants and represents that the SaaS acquired by the Department under this Contract conform to Contractor's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.
2. **Title and Ownership.** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights from a third party, to any Products or Services acquired by the Department under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the State and hold the State harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.
3. **Product Warranty.** Contractor further warrants and represents that Products or Services shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the Contractor's standard commercial warranty period, if applicable, or for the term of the contract from the date of acceptance, whichever is longer (the "Product warranty period").
4. **Virus Warranty.** The Contractor represents and warrants that any Licensed Software acquired under the Contract by the Department does not contain any known Viruses. Contractor is not responsible for Viruses introduced at the Department's Site.
5. **Workmanship Warranty.** Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Department must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.
6. **Survival of Warranties.** All warranties contained in this Contract shall survive the termination of this Contract.
7. **Prompt Notice of Breach.** The Department shall promptly notify the Contractor and the Commissioner in writing of any claim of breach of any warranty provided herein.
8. **Additional Warranties.** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the Department.
9. **No Limitation of Rights.** The rights and remedies of the Department provided in this clause are in addition to and do not limit any rights afforded to the Department by any other clause of the Contract.

#### W. Ownership/Title to Project Deliverables

Title and ownership to software delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must during the term of the Contract, at a minimum, grant the Department a non-exclusive license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the Department as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Department's satisfaction).

#### X. Contractor's Obligation with Regard to ISV (Third Party) Product



Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Department at Contractor's sole cost and expense.

Y. Escrow of Source Code

1. The Contractor shall either:
  - a. Provide the Department with the source code for the product;
  - b. At the expense of the Contractor, place the source code in a third-party escrow arrangement with a designated escrow agent, who shall be named and identified to, and acceptable to, the Department, and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable and approved by the Department. That agreement must, at minimum, provide for release of the source code to the Department if a) Contractor files for bankruptcy or becomes insolvent b) Contractor misrepresents its products or services c) Contractor fails to perform work as agreed upon in this contract and subsequent agreement d) Contractor ceases business operations generally or fails to make available maintenance or support services for the then-current version of the licensed product; or
  - c. Certify to the Department that the product manufacturer/developer has named the Department as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Department and who shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the product in the same manner as provided above and such updating of escrow shall be certified to the Department in writing. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.
2. Throughout the term of this Contract, the Contractor will deliver all software, including updates to the software, to the Department or the escrow agent within five (5) business days of implementing the use of such software so that all software in the custody of the Department or the escrow agent will be the then current version reflecting all changes and upgrades, but in any event, no less frequently than every six (6) months.
3. The Contractor also must place in escrow one (1) paper copy and one (1) electronic copy of maintenance manuals and additional documentation that are required for the proper maintenance of all systems and the software used to develop, test, and implement the system. Revised copies of manuals and documentation must be placed in the escrow account in the event they are changed. Such documentation must consist of logic diagrams, installation instructions, operation and maintenance manuals, and must be the same as that which the Contractor supplies to its maintenance personnel to maintain its software.
4. Except as otherwise provided in this Contract, the Contractor will not be obligated to provide source code (the un-compiled operating instructions for the software) for commercial software unless it is readily available from the licensor. When source code is provided, it must be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code. If the source code of such third-party is not otherwise provided or freely available, the Contractor will be obliged to ensure that the source code and associated documentation is subject to an escrow agreement meeting the requirements of Paragraph 1 of this Appendix. In the event that this Contract expires and is not renewed or extended, the Department has the option to continue the escrow agreement until such time that the Department is no longer using the software or documentation covered by this escrow agreement.

**APPENDIX H**  
**FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS ASSOCIATE AGREEMENT**

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.

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

1. 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.

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 H

## **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.

A. 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. Appendix M Page 2 of 4

- B. 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.
- A. 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

- A. Contractor is required to submit a Quarterly MWBE Contractor Compliance Report to the New York State Department of Health by the 10<sup>th</sup> 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. Data should be submitted via the online compliance system at <https://ny.newnycontracts.com>.

VII. Liquidated Damages - MWBE Participation

- B. 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.
- C. 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.
- A. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.

## **ATTACHMENT F**

### **NEW YORK STATE DOH MWBE 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 should 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 list of bidder generated attachments, documenting the bidder’s good-faith efforts, can be found in the “Detailed Instructions for Completing MWBE Forms 1 & 2”, which is found herein. 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**

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

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

Click here to enter text.

**PROJECTED M/WBE USAGE**

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

- M/WBE Form #1 – cont.

**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:

<b>MBE Firm (Exactly as Registered)</b>	<b>Description of Work (Products/Services) [MBE]</b>	<b>Projected MBE Dollar Amount</b>
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 #1 – cont.

**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
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____

**New York State Department of Health  
Waiver Request**

<b>Applicant/Grantee :</b> Click here to enter text.		<b>Federal Identification No.:</b> Click here to enter number.		
<b>Address:</b> Click here to enter text.		<b>Solicitation/Contract No.:</b> Click here to enter number.		
<b>City, State, Zip Code:</b> Click here to enter text.		<b>M/WBE Goals: MBE %%% WBE %%%</b> (From Lines 2&3 of Form 1)		
<p><b>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.</b></p>				
<p><b>Contractor is requesting a :</b></p> <p><input type="checkbox"/> <b>MBE Waiver – A waiver of the MBE Goal for this procurement is requested. Total / Partial (circle one)</b></p> <p><input type="checkbox"/> <b>WBE Waiver – A waiver of the WBE Goal for this procurement is requested. Total / Partial (circle one)</b></p> <p><input type="checkbox"/> <b>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.)</b></p> <p><b>Date of such filing with Empire State Development:</b> Click here to enter a date.</p> <p><u>If a total or partial waiver is requested, appropriate supporting documentation as outlined in the Detailed MWBE Form Instructions is required.</u></p>				
<p><b>PREPARED BY (Signature) _____ Date: _____</b></p> <p>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.</p>				
<b>Name and Title of Preparer (Printed or Typed):</b>		<b>Telephone Number:</b>	<b>Email Address:</b>	
<p>Submit with the bid or proposal or if submitting after award submit to: <a href="mailto:doh.sm.mwbe@health.ny.gov">doh.sm.mwbe@health.ny.gov</a></p>		<b>***** FOR DMWBD USE ONLY *****</b>		
		<b>REVIEWED BY:</b>		<b>DATE:</b>
		<p><b>Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO</b></p> <p><b>MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></b></p> <p><input type="checkbox"/> <b>Total Waiver</b> <span style="float: right;"><input type="checkbox"/> <b>Partial Waiver</b></span></p> <p><input type="checkbox"/> <b>ESD Certification Waiver</b> <span style="float: right;"><input type="checkbox"/> <b>*Conditional</b></span></p> <p><input type="checkbox"/> <b>Notice of Deficiency Issued</b> _____</p>		

**- 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**

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

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color,



## 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 G  
BIDDER'S DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

Procurement Title: [Type text]  
RFP #: [Type text]  
Bidder Name: [Type text]  
Bidder Address: [Type text]

Bidder SFS Vendor ID #: [Type text]  
Bidder Federal ID#: [Type text]

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

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

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

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

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

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

**Governmental Entity:** [Type text]

**Date of Finding of Non-responsibility:** [Type text]

**Basis of Finding of Non-Responsibility:** [Type text]

(Add additional pages as necessary)

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

No Yes

2b. If yes, please provide details below.

**Governmental Entity:** [Type text]

**Date of Termination or Withholding of Contract:** [Type text]

Basis of Termination or Withholding: [Type text]

(Add additional pages as necessary)

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

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(E-mail Address)



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**ATTACHMENT I  
NO-BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ RFP # \_\_\_\_\_

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 J  
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 K DIVERSITY PRACTICES QUESTIONNAIRE**

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? Yes or No

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope, and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

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Do not include onsite project overhead. Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

Signature of Owner/Official \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_  
Notary Public

## **ATTACHMENT L**

### **Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The CONTRACTOR offering to provide services pursuant to this Contract, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this contract does not and will not create a conflict of interest with nor position the CONTRACTOR to breach any other contract currently in force with the State of New York.

As such, the CONTRACTOR will disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated contractor, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Contractor or their Affiliates, in connection with your rendering services enumerated in this Contract. If a conflict does or might exist, please describe how you would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

In addition, the Contractor must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

Furthermore, the CONTRACTOR attests that it will not act in any manner that is detrimental to any State project on which the CONTRACTOR is rendering services. Specifically, the CONTRACTOR attests that:

1. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not violate any existing contracts or agreements between the CONTRACTOR and the State;
2. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the CONTRACTOR has with regard to any existing contracts or agreements between the CONTRACTOR and the State;
3. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not and will not compromise the CONTRACTOR's ability to carry out its obligations under any existing contracts between the CONTRACTOR and the State;
4. The fulfillment of any other contractual obligations that the CONTRACTOR has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the CONTRACTOR will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the CONTRACTOR will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

7. No former officer or employee of the State who is now employed by the CONTRACTOR, nor any former officer or employee of the CONTRACTOR who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

8. The CONTRACTOR has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

CONTRACTORS responding to this contract should note that the State recognizes that conflicts may occur in the future because a CONTRACTOR may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

This form must be signed by an authorized executive or legal representative.

**ATTACHMENT M  
REGIONAL MAP**

**New York State Department of Health  
Division of Long Term Care**

**Regions for the Person-Centered Planning  
Comprehensive System Transformation  
Statewide Training Initiative**

