

NEW YORK STATE DEPARTMENT OF HEALTH

An Invitation to Bid for
Staffing Services to Perform
Epidemiologic and Program Evaluation Assistance

New York State Department of Health, AIDS Institute

IFB No. 17745

Staffing Services for the Division of HIV/STD Epidemiology, Evaluation,
and Partner Services (DEEP)

Schedule of Key Events

IFB Release Date	February 27, 2018
Written Questions Due (by 3:00 P.M. ET)	March 13, 2018
Response to Written Questions (on or about)	March 27, 2018
Bid Due Date (no later than 3:00 P.M. ET)	April 12, 2018
Anticipated Start Date	July 2, 2018

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

Sue Mantica
Bureau of Contracts
New York State Department of Health
Empire State Plaza
Corning Tower, Room 2834
Albany, NY 12237
Telephone: 518-474-7896
E-mail: sue.mantica@health.ny.gov

Permissible Subject Matter Contacts:

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

- **Submission of Written Questions:**

John Helmeset
New York State Department of Health
Division of HIV/STD Epidemiology, Evaluation, and Partner Services (DEEP)
Empire State Plaza, Corning Tower Room 342
Albany, NY 12237
Telephone: 518-474-7238
E-mail: john.helmeset@health.ny.gov

- **Submission of Written Bids:**

Michele Kerwin
New York State Department of Health
AIDS Institute, Office of Administration and Contract Management
Empire State Plaza, Corning Tower Room 359
Albany, NY 12237
Telephone: 518-474-7238
E-mail: AIGPU@health.ny.gov

- **Debriefings:**

James M. Tesoriero, Ph.D.
New York State Department of Health
Division of HIV/STD Epidemiology, Evaluation, and Partner Services (DEEP)
Empire State Plaza, Corning Tower Room 342
Albany, NY 12237
Telephone: 518-474-7238
E-mail: james.tesoriero@health.ny.gov

- **Negotiation of Contract Terms after Award:**

John Helmeset
New York State Department of Health
Division of HIV/STD Epidemiology, Evaluation, and Partner Services (DEEP)
Empire State Plaza, Corning Tower Room 342
Albany, NY 12237
Telephone: 518-474-7238
E-mail: john.helmeset@health.ny.gov

For further information regarding these statutory provisions, see the Lobbying Statute summary in Section F.12 of this solicitation.

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A. INTRODUCTION

Through this Invitation for Bid (IFB), the New York State Department of Health (NYSDOH), AIDS Institute (AI) will accept bids from qualified contractors for the provision of staffing services to place professional research and epidemiologic staff in the NYSDOH Central Office located in Albany, New York. Up to ten (10) contract staff will be placed. The NYSDOH will contract with one (1) qualified primary contractor and one (1) secondary contractor as necessary. The term of this contract is a maximum of five (5) years with an anticipated contract period from July 1, 2018 – June 30, 2023, and is subject to the NYSDOH's need for services, the availability of funds, approvals from the New York State Attorney General (AG) and the Office of the State Comptroller (OSC), and acceptable performance by the contractor.

The activities of contracted staff as described in this IFB are essential for protecting the health of NYS residents and are supported by several laws and regulations. Under Public Health Law (PHL) Section 206 (1) (d), the Commissioner of Health is required to investigate causes of disease, epidemics, and sources of mortality. The reporting of all suspected or confirmed communicable disease cases, outbreaks or unusual diseases to the NYSDOH is mandated under PHL §§2103-2104 and 10 NYCRR §2.1 and §2.2, and the NYSDOH, AI is responsible for the surveillance, investigation, prevention and control of HIV and other sexually transmitted infections included on the reportable communicable disease list.

The awarded contractor(s), under the direction of the NYSDOH, AI, will provide contracted staff to assist in conducting epidemiologic, other data-related investigatory services, and program evaluation assistance related to the Governor's Ending the Epidemic (ETE) Initiative.¹ Contracted staff will be responsible for performing the duties specified in Section C-3, Scope of Work.

B. BACKGROUND

In June 2014, Governor Cuomo announced a three-point plan to end AIDS as an epidemic in NYS. The plan includes identifying all persons with HIV who remain undiagnosed and linking them to health care; linking and retaining persons diagnosed with HIV to health care and getting them on anti-HIV therapy to maximize HIV viral suppression so they remain healthy and prevent further transmission; and providing access to Pre-Exposure Prophylaxis (PrEP) to persons who engage in high-risk behaviors to keep them HIV negative. The goal of the initiative is to decrease the estimated number of new HIV infections to 750 by the end of 2020, and to reduce the rate at which persons progress to AIDS by 50%.

In October 2014, Governor Cuomo established a Task Force in support of the three-point plan. The Task Force developed and synthesized recommendations, presented in New York's Blueprint to end the AIDS epidemic.² The Blueprint serves as New York State's roadmap to realizing the Governor's three-point plan. Several Blueprint recommendations (BPR) require additional epidemiologic and/or investigatory staffing resources to be accomplished. The bullets below detail examples of new epidemiologic and/or investigatory work that has been generated by the ETE Initiative and BPR:

¹ A description of the ETE Initiative is available at: www.health.ny.gov/EndingtheEpidemic.

² The Blueprint is available at: www.health.ny.gov/EndingtheEpidemic.

- Using HIV surveillance data to identify, locate and link People Living with Diagnosed HIV Infection (PLWDHI) who are out of care to HIV-related medical care.
- Regularly matching HIV surveillance data to NYS Medicaid data, in order to provide manage care plans identifiable data regarding in-care patients who are not virally suppressed.
- Regularly matching HIV surveillance data to NYS Department of Corrections and Community Supervision (DOCCS) data, to identify, locate and link HIV positive incarcerated individuals who are out of care back to care in prison and/or in the community.
- Maintaining and enhancing a “provider portal” for use by HIV care providers in NYS to check the status of patients lost to HIV-related medical care.
- Supplying HIV surveillance data to an outside contractor to create a web-based, public facing “Ending the Epidemic Dashboard.” The Dashboard broadly disseminates information to stakeholders on the Initiative’s progress.
- Developing and implementing comprehensive plans to evaluate new ETE initiatives related to scaling up HIV testing, Post Exposure Prophylaxis (PrEP) and HIV-related care and treatment.

To effectively carry out these new ETE-related epidemiologic, investigatory and evaluation activities, the NYSDOH is seeking to procure the services of a company to provide up to ten (10) qualified professional research and epidemiologic staff who will be located at the NYSDOH Central Office in Albany, NY. Under the direction of the NYSDOH supervising staff, contracted staff will perform various epidemiologic, data-related investigatory, and program evaluation-related assistance in support of the Ending the Epidemic (ETE) Initiative.

Eligibility Requirements for Bidders

Bidders must meet the following minimum eligibility requirements for their bid to be considered for an award:

- a.) Bidders must have a minimum of three (3) years of experience as an employer (hiring and placement) in the Albany, New York area of qualified professional research and epidemiologic staff with specific qualifications as specified in Section C-3, Contracted Staff Qualifications and Duties.

C. DETAILED SPECIFICATIONS

1. Location of Work

Staff will work full-time in the NYSDOH offices located at the Empire State Plaza, Corning Tower in Albany, New York.

2. Scope of Work

The NYSDOH will award one (1) primary contract and one (1) secondary contract to obtain the services of up to ten (10) qualified staff. All employees of the contractor, who shall perform consulting services under the resulting contract(s), shall possess the necessary qualifications, training, and licenses that are required within NYS where the services specified are to be provided or performed, and shall be legally entitled to work in NYS. All persons that perform services under the contract on behalf of NYSDOH shall, in performing these services, comply with all applicable Federal, State, and local laws concerning employment in the United States.

It is understood and agreed that the contractor, and employees under this contract, are independently

employed, and in no manner, shall they be deemed employees of the NYSDOH, and therefore are not entitled to any of the benefits associated with such employment.

a.) **Staffing** When the contract is awarded, the primary contractor will have up to 90 days for initial placement of staff. NYSDOH will use the following procedures when engaging a contractor for hiring initial and replacement staff:

- i. The NYSDOH will offer the work to the primary contractor;
- ii. The primary contractor will pre-screen all candidates and identify candidates that meet the staff qualifications outlined in Section C-4, Contracted Staff Qualifications and Duties;
- iii. Contractor will supply a minimum of one (1) or more resume(s) per vacancy within 10 business days after NYSDOH's initial request. DEEP staff will review resumes and chose the candidate(s) for interview;
- iv. In the event the primary contractor's candidates are not approved by the NYSDOH as outlined in Section C-3 (a), (iii), the NYSDOH reserves the right to concurrently engage the secondary contractor based on the Department's needs and urgency in filling these positions; and
- v. Steps C-3 (a), (i-v) will continue with both primary and secondary contractors until all positions are filled.

b.) **Changes in Staffing:** It is anticipated that all staff hired for this contract will be employed for the entire duration of the assignment per the contract. However, if staff voluntarily or involuntarily leave their assignment, the contractor will replace staff as described in Section C-3 (a), (i-iv). If either the contractor, or NYSDOH, for any reason deems that a contracted staff must be removed from their assignment prior to the completion of this contract, each party shall mutually agree that such removal shall take place.

3. Contracted Staff Qualifications and Duties

Contracted staff will be required to meet the following minimum qualifications and perform outlined duties:

a.) Contracted Staff Minimum Qualifications:

- i. A bachelor's degree with a minimum of nine (9) semester hours of mathematics or statistics; and a minimum of two (2) years of research, evaluation, or epidemiologic experience OR a Master's degree in public health or a related field and a minimum of one (1) year of research, evaluation or epidemiologic experience.
- ii. Experience working with relational databases, SQL Programming, SAS, SPSS or other statistical software.

Please note the following:

- The contractor will be paid according to the hourly rate(s) listed in the Cost Proposal Form (Attachment 3) regardless of the varying levels of staff expertise performing these duties.
- In order to be eligible for appointment and to maintain employment, contracted staff cannot be listed as an excluded individual or entity on any Federal or Federally-assisted program. If contracted staff are appointed and subsequently listed as an excluded individual or entity on any of these lists, this will result in action to remove contracted staff from the position.

b.) Contracted Staff Duties:

- i. **Reporting Requirements:** In addition to any reporting requirements of the contractor, contracted staff will electronically submit monthly reports to the NYSDOH supervisor that briefly summarizes their activities performed each month. An activity reporting template will be made available for this purpose by the NYSDOH assigned supervisor. Each report will include, but will not be limited to, a summary of assigned tasks, status of progress, details regarding barriers or concerns of meeting goals, and anticipated completion date(s). Each month, the assigned NYSDOH supervisor will review staff reports, and acknowledge time and attendance.
- ii. **Confidentiality Requirements:** Contracted staff are required to sign all applicable data use agreements, abide by NYSDOH required confidentiality training and attestation, and abide by NYSDOH non-disclosure agreements. All documents, notes, or references (recorded and hard copy) will remain the property of the NYSDOH. The contractor, and its employees, shall maintain the confidentiality of all material, identity of any parties, and content of any material related to work performed in the context of this contract. Any documents received by the NYSDOH are public documents accessible for public inspection and copying under the terms and provisions of NYS Public Officers Law Section 87. A copy of the New York State Department of Health HIV Surveillance and Partner Services Attestation of Confidentiality for Staff Who Work with Highly Confidential Data is included (Attachment 8).
- iii. **Work Activities:** Under the direction of the NYSDOH supervising staff, contracted staff will perform epidemiologic, other data-related investigatory services, and program evaluation assistance related to the Ending the Epidemic (ETE) Initiative. Specific job duties include, but are not limited to, the following:
 - Participate in the development, implementation, collection, processing and analysis of AIDS Institute maintained databases, including HIV surveillance data and AIDS Institute Reporting System (AIRS) data.
 - Serve as a “data-related liaison” between the AIDS Institute’s surveillance staff, AI program staff including contract managers, and external collaborators (e.g., Department of Corrections and Community Supervision staff, OASAS staff, and other key collaborators), to ensure appropriate coordination and management of data associated with ETE programming.
 - Facilitate the use of AIDS Institute maintained databases for programmatic purposes consistent with the ETE Initiative (e.g., Conduct searches within the NYS HIV surveillance data for patients thought to have fallen out of HIV-related medical care and use this information to generate field assignments to link out-of-care persons back to HIV-related medical care).
 - Participate in data-driven continuous quality improvement activities designed to improve the quality of HIV ETE-related programming, including (but not limited to), targeted and routine HIV testing, linkage to prevention and care, treatment adherence and viral load suppression.
 - Assist in the review, update, and revision of partner services field manuals, policies and procedures, and operations guidance to reflect ETE-related additions and the breadth of current practice. Provide in-service training on legal mandates, case definition and reporting requirements, and the use of HIV-related data for programmatic purposes.

- Assist with the development of SMART (Specific, Measurable, Available at an acceptable cost, Relevant and Time-bound) objectives, key variable measurements, and evaluation planning for new ETE programming.
- Conduct medical record reviews to verify cases of HIV infection, to verify the offer of HIV testing per public health law and to facilitate new ETE-related programming.
- Provide technical assistance to hospital, primary care, and ambulatory care practices related to the implementation of routine testing and compliance with NYS public health law. Provide training and technical assistance to AI contract management staff and AI-funded HIV testing providers related to improving the efficiency of targeted testing initiatives in NYS.
- Provide data driven decision making technical assistance related to priority ETE initiatives.
- Provide support and technical assistance in the development and modification of The Dashboard and other mechanisms for measuring ETE progress.

4. Contractor and NYSDOH Responsibilities:

a) Contractor Responsibilities:

- i. The contractor will ensure that contracted staff are appropriately licensed and credentialed as specified in Section C-3, Contracted Staff Qualifications and Duties.
- ii. Contractor will ensure that staff undergo orientation, confidentiality, and on-the-job surveillance and investigation training given by NYSDOH staff. Trainings will be held at locations close to the Capital District.
- iii. Contractor will cover the cost of staff travel to attend applicable trainings and/or meetings as part of the agreed upon hourly rate. The NYSDOH will identify applicable trainings and/or meetings, and provide cost information to the contractor.
- iv. Contractor will provide NYSDOH monthly invoices that detail staff hours worked along with documentation to verify staff hours worked. Invoices must be accompanied by a monthly report, which will include, but will not be limited to, a summary of assigned tasks, status of progress, details regarding barriers or concerns of meeting goals, and anticipated completion date(s). Each month, the assigned NYSDOH supervisor will review staff reports, and acknowledge time and attendance.
- v. The contractor will also comply with the following requirements as a condition of the contract. The NYSDOH requires background checks which must be conducted at the expense of the contractor, including, but not limited to:
 - Any loyalty or terrorism issue;
 - Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, employability for negligence or misconduct, criminal conduct);
 - Dishonorable military discharge;
 - Felony and misdemeanor offenses;
 - Drug manufacturing/trafficking/sale;
 - Criminal sexual misconduct;
 - Employment related misconduct involving dishonesty, criminal or violent behavior; and
 - Misrepresentation of information including educational and professional background, legal status or valid licensure.
- vi. In making a suitability determination, the Contractor shall consider the information obtained through the Federal and State background checks and evaluate them against the work to be performed, the performance location, and the degree of risk to the organization in accordance with NYS Correction Law §752 including.

- vii. Contractor will ensure that all contracted staff abide by confidentiality requirements specified in Section C-3 (b), (ii), Confidentiality Requirements.

b) NYSDOH Responsibilities:

- i. NYSDOH will provide direction and supervision over contracted staff activities, including any recommendations that may be developed as a result of contract activities. If staff issues or discrepancies are identified, (e.g., time and attendance, work performance, etc.), NYSDOH will notify the contractor and a mutually agreed upon corrective action plan will be implemented. Any supervision costs incurred by the contractor must be included as administrative costs (as part of the hourly rate) and may not be separately billed to the NYSDOH;
- ii. In order to facilitate the provision of the services purchased under this IFB, the NYSDOH will provide the following at no charge to the successful Contractor: Office space for contract staff at the NYSDOH's Central Office in Albany; office furniture and supplies; communications equipment and services including workstation telephones, fax machines, personal computers and computer support services as required;
- iii. NYSDOH will provide any specialty training for experience not otherwise specified under Section C-3, Contracted Staff Qualifications and Duties.

D. BID PROPOSAL

1. Bidder Eligibility

Bidders must submit evidence of their qualifications, as specified below:

- a) Bidders must have a minimum of three (3) years of verifiable experience as an employer (hiring and placement) in the Albany, New York area of qualified professional research and epidemiologic staff with specific qualifications as specified in Section C-3, Contracted Staff Qualifications and Duties.

2. Bidder's Narrative Proposal

The bidder is required to submit a narrative which clearly states how they meet the minimum eligibility requirements, and further describes how they will ensure that qualified personnel are hired, on staff, or available under contract, to implement the activities described under Section C-2, Scope of Work. **This narrative proposal should not exceed seven (7) single-spaced pages.** This narrative must include, at a minimum:

- a) Documentation demonstrating how the bidder meets the eligibility requirements;
- b) Description and/or provide the organization's internal control program, including plan for the periodic review of performance standards, oversight, and monitoring of contracted staff performance;
- c) List of current or recent contracts for similar work with a description of the work conducted (staff qualifications, number of staff, type of agency, position locations, etc.);
- d) The Bidder must also demonstrate (provide resume or similar documentation) that personnel responsible for the recruitment, hiring, and supervision have the experience and expertise in recruiting and hiring professional healthcare or epidemiology staff for placement in diverse healthcare arenas, such as state and local government, hospitals, and nursing homes. The Bidder's experience and proven success in conducting

activities relevant to the requirements listed in Section C, Detailed Specifications, must be documented. Additionally, bidders shall describe experience hiring staff with infection control backgrounds and qualifications.

3. Cost Proposal

Bidders must submit their cost proposal on the “Cost Proposal Form” (Attachment 3). The Cost Proposal Form must clearly reflect the annual hourly rates the bidder is proposing, taking into account the following information:

- a) An hourly staff rate must be proposed for each staff for each year of the contract period (5 years) and listed on the Cost Proposal Form. Reimbursement for services will be on an hourly basis. Hourly rates must be inclusive of all costs including salaries, fringe benefits, administrative costs, and overhead fees.
- b) Up to ten (10) contracted staff will be located in the Central Office in Albany, New York.
- c) The estimated number of hours per staff required by the NYSDOH for each contract year is based on a 37.50 hour per work week and 52 weeks per year and calculated using the formula 1,950 hours per staff, per year. This estimate is provided to potential Bidders solely for the purpose of constructing their hourly rate, and does not guarantee that the projected number of staff or number of hours will be billable by the successful Bidder. Payments will be based on the actual number of staff and hours worked.

E. METHOD OF AWARD

The Department will award one (1) primary contract in the Central Office in Albany, New York as described in this IFB to the responsible and responsive bidder who offers the lowest total bid. The Department will also award one (1) secondary contract in the Central Office in Albany, New York to the responsible and responsive bidder who offers the second lowest total bid. The secondary contractor will only be used if the primary contractor cannot meet the contract deliverables in the required timeframes as described in Sections C-2 (a-b).

At the discretion of the NYSDOH, any or all bids received in response to the IFB, may be rejected. As described above, NYSDOH will issue primary and secondary contract awards.

In the event of a tie, the tied bidders will be given the opportunity to provide their best and final bid price to the department, and after evaluation of these revised bids, the award will then be made to the lowest bidder.

F. ADMINISTRATIVE

1. Issuing Agency

This IFB is a solicitation issued by the NYSDOH which is responsible for the requirements specified herein and for the evaluation of all bid proposals.

2. Inquiries

Any questions concerning this solicitation must be submitted to John Helmeset no later than the date and time listed in the Schedule of Key Events on the cover of this IFB #17745 via an email to: john.helmeset@health.ny.gov.

Prospective Bidders shall note that all clarifications and exceptions, including those relating to the terms and conditions of the contract, must be raised prior to the submission of a proposal. Each question raised shall cite the IFB section, paragraph and page number to which it refers.

Questions and answers, as well as any IFB updates and/or modifications, will be posted on the Department of Health's website at <http://www.health.ny.gov/funding/> on or about the date indicated in the Schedule of Key Events on the cover of this IFB.

3. Submission of Bids

Interested Contractors should submit three (3) handwritten signed originals and three (3) copies of their Bid Proposal. The Bid Proposal must be received no later than the date and time noted in the Schedule of Key Events to be accepted.

Responses to this solicitation must be in a sealed envelope clearly marked **“IFB #17745 “Epidemiologic and Program Evaluation Assistance” and received no later than the due date and time indicated in the Schedule of Key Events at the following address:**

Michele Kerwin
New York State Department of Health
Office of Administration and Contract Management
Grants and Procurement Unit
Empire State Plaza – Corning Tower, Room 359
Albany, New York 12237-0658

It is the bidders' responsibility to see that bids are delivered to Michele Kerwin at the address above prior to the date and time of the bid due date.

Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to room 359 will not be considered. E-mail bid submissions are not acceptable and will not be considered.

Bid Proposal Packages must include the following to be considered:

- Narrative Proposal (limited to seven (7) single-spaced pages) including a description of how the bidder meets the minimum three years of experience in providing staffing services and further describe how they will ensure that qualified personnel are hired, on staff, or available under contract within designated timeframes to meet the contract deliverables outlined in Section 2, Scope of Work. Refer to Section D-2, Bidder's Narrative Proposal.
 - Cost Proposal Form (Attachment 3)

Bid Proposal Packages should also include the following in their submission:

- Identification of (2) reference organizations that will verify the Contractor's provision of services similar to those in this contract for a period of 3 years. The Bidder must include the organization name, contact name, contact phone number and contact email address for these organizations. Submission of references will be required for contract award.
- New York State DOH Lobbying Form (Attachment 1)
- Vendor Responsibility Attestation (Attachment 4)
- M/WBE Procurement Forms (Attachment 5)

- Encouraging Use of New York Businesses in Contract Performances (Attachment 6)

4. The Department of Health Reserves the Right to

- a) Reject any or all proposals received in response to the IFB;
- b) Withdraw the IFB at any time, at the agency's sole discretion;
- c) Make an award under the IFB in whole or in part;
- d) Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- e) Seek clarifications and revisions of proposals;
- f) Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- g) Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- h) Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- i) Change any of the scheduled dates;
- j) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- k) Waive any requirements that are not material;
- l) Negotiate with the successful bidder within the scope of the IFB in the best interests of the state;
- m) Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- n) Utilize any and all ideas submitted in the proposals received;
- o) Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 365 days from the bid opening; and,
- p) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerors proposal and/or to determine an offerors compliance with the requirements of the solicitation.

5. Payment

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

- a) Preferred Method: Email a pdf copy of your signed claim to the NYS Business Services Center (BSC) at: AccountsPayable@ogs.ny.gov with a subject field as follows: Subject: **Unit ID: 3450340-Contract # XXXXXX**
- b) Alternate Method: Mail claims to BSC at the following U.S. postal address:

**NYS Department of Health
Unit ID 3450340
PO Box 2093
Albany, NY 12220-0093**

c) Payment for invoices and/or claims submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner of Health, 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 or by email at epunit@osc.state.ny.us or by telephone at 518-474-6019. Contractor acknowledges that it will not receive payment on any invoices and/or claims 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 shall be submitted to the following address:

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

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

d) Submission of Claims and/or Invoices

The contractor will submit monthly invoices for expenses that have been incurred, due 30 days after the end of each month, and must be accompanied by a New York State Claim for Payment (Form AC3253-S) to ensure payment. The Claim for Payment must include a time sheet signed by the NYSDOH supervisor depicting the number of hours worked by contracted staff, along with the detailed activity reporting template, for the same time period. Claims for Payment received without the required documents will be held for payment until the documents are received, and reviewed for accuracy and completeness.

The contractor will be reimbursed on an hourly rate for the number of hours worked on conducting project activities/contract deliverables, not to exceed the total number of hours outlined in the agreed upon contract. Expenses incurred, but disallowed, will be subtracted from the amount claimed. Modifications to the approved proposal must be submitted in writing, and approved by the NYSDOH prior to the contractor instituting such changes.

6. Penalties

The contracts awarded as a result of this IFB are subject to a variety of penalties based on performance standards as determined by the NYSDOH. The Bidder must take these penalties into account and understand that there will be no exceptions to the enforcement of these penalties if the performance standards are not met. Penalties described in this section are cumulative unless they are described below as being alternative.

a) Failure to provide, maintain or replace terminated staff.

The contractor must have a plan in place for providing and maintaining qualified staff to perform the deliverable activities as described in Section C-4. Failure to be able to consistently provide, maintain or replace terminated staff may result in termination of the contract.

b) Violations of HIPAA or Medicaid confidentiality or privacy; breach of information security; breach of any other confidentiality or privacy requirement of law or regulation.

Any violation by a contractor of these requirements for which violation results in a fine or penalty being imposed on the State of New York, will subject the contractor to a penalty equal to twice the amount of the fine imposed on the State. In addition, the contractor will hold the State harmless and reimburse the State for any damages or other costs to which the State may be subject as a result of the contractor's violation of these requirements.

c) Failure to maintain "Responsible Vendor" status.

The contractor must maintain "Responsible Vendor" status throughout the entire contract period. Any adverse change to the Contractor's Responsible Vendor status to Non-Responsible could result in termination of the contract.

7. Terms of Contract

This agreement shall be effective upon approval of the NYS Office of the State Comptroller. The contract period will be multi-year for five years beginning July 1, 2018 – June 30, 2023, subject to the availability of funding and the contractor's successful completion of deliverables in the prior year's contract period. Annual contract renewals are not required, however any significant changes to the budget or scope of work is subject to the prior approval of the NYSDOH and the Office of the State Comptroller.

This agreement may be canceled at any time by the NYSDOH 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.

If State fiscal or other issues result in a reduction of the contract amount, the NYSDOH reserves the right to distribute that reduction in the way that will result in the maintenance of the highest number of contract staff positions possible.

8. 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 fifteen (15) business days from date of award or non-award announcement.

9. Protest Procedures

In the event unsuccessful bidders wish to protest the award resulting from this IFB, bidders shall follow the protest procedures established by the Office of the State Comptroller. 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/>.

10. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can

obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the NYSDOH or the Office of the State Comptroller for a copy of the paper form. Winning Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment 4).

11. State Consultant Services Reporting

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

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

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

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at: <http://www.osc.ny.gov/procurement/>.

12. Lobbying Statute

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

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

\$2,000 to \$5,000; and

k) establishes the Advisory Council on Procurement Lobbying.

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

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

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

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

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

14. Information Security Breach and Notification Act

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

Board (CPB). Information relative to the law and the notification process is available at:
<http://www.cscic.state.ny.us/security/securitybreach/>

15. New York State Tax Law Section 5-a

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

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

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

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

Forms ST-220-TD and ST-220-CA may be accessed electronically at:
ST-220-TD: www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf
ST-220-CA: www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

16. Piggybacking

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

17. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women Owned Business Enterprises and Equal Employment Opportunities (EEO) for Minority Group Members and Women (M/WBE)

NEW YORK STATE LAW:

Pursuant to New York State Executive Law Article 15-A, the NYSDOH 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 NYSDOH 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 NYSDOH establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises and the employment of minority groups members and women in the performance of NYSDOH contracts.

Business Participation Opportunities for M/WBEs

For purposes of this solicitation, NYSDOH hereby establishes an overall goal of **30%** for M/WBE participation, **15%** for Minority-Owned Business Enterprises ("MBE") participation and **15%** for Women-Owned Business Enterprises ("WBE") participation.

Equal Employment Opportunity Requirements

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

Bidder further agrees, where applicable, to submit with the bid a M/WBE staffing plan (Attachment 5, Form #4) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the New York State Department of Health, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

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

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

18. Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/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 the NYSDOH receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the NYSDOH 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 NYSDOH shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

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

19. Encouraging Use of New York Business in Contract Performance (Attachment 6)

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 shall complete Attachment 6 to indicate their intent to use/not use New York businesses in the performance of this contract.

G. ATTACHMENTS

1. New York State DOH Lobbying Form
2. No Bid Form
3. Cost Proposal Form
4. Vendor Responsibility Attestation
5. M/WBE Procurement Forms
6. Encouraging Use of New York Businesses in Contract Performances
7. Sample Standard New York State Contract Language and Appendices
8. New York State Department of Health HIV Surveillance and Partner Services Attestation of Confidentiality for Staff Who Work with Highly Confidential Data
9. IFB Cover Sheet

H. APPENDICES

The following will be incorporated as appendices, if applicable, into any contract resulting from this Invitation to Bid. This Invitation to Bid will, itself, be referenced as an appendix of the contract.

- ❑ APPENDIX A - Standard Clauses for All New York 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
 - The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- ❑ State of New York Agreement
- ❑ APPENDIX D - General Specifications
- ❑ APPENDIX B - Invitation to Bid (IFB)
- ❑ APPENDIX C - Proposal
- ❑ APPENDIX E

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

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

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

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

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

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

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

DB-120.1 – Certificate of Disability Benefits Insurance

DB-155 – Certificate of Disability Benefits Self-Insurance

- ❑ APPENDIX G - Notices
- ❑ APPENDIX H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)
- ❑ APPENDIX M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures

Attachment 2
NEW YORK STATE DEPARTMENT OF HEALTH
No-Bid Form

PROCUREMENT TITLE: Epidemiologic and Program Evaluation Assistance IFB# 17745

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

We do not provide the requested services. Please remove our firm from your mailing list.

We are unable to bid at this time because:

Please retain our firm on your mailing list.

(Firm Name)

(Officer Signature) (Date)

(Officer Title) (Telephone)

(E-mail Address)

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

Attachment 3
NEW YORK STATE DEPARTMENT OF HEALTH
Cost Proposal Form

Organization Name: _____

Contact Person: _____

IFB#: 17745

Contract Period: July 1, 2018 – June 30, 2023

List Year	Hourly Rate Per Staff
Year 1:	
Year 2:	
Year 3:	
Year 4:	
Year 5:	

_____ Signature of Bidder's Authorized Representative	_____ / _____ / _____ Date
_____ Title of Authorized Representative	_____ Phone Number

Attachment 4
NEW YORK STATE DEPARTMENT OF HEALTH
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 5
**NEW YORK STATE DOH M/WBE REQUIRED FORMS FOR IFB/RFPs AND FOR-
PROFITS/GOVERNMENT ENTITIES APPLYING TO RFAs (GRANT OPPORTUNITIES)**

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

Form #1: Bidder M/WBE Utilization Plan - This document should be completed by all bidders responding to RFPs/IFB/RFAs with an M/WBE goal greater than zero. The bidder must demonstrate how it plans to meet the stated M/WBE goal. In completing this form, the bidder should describe the steps taken to establish communication with M/WBE firms and identify current or future relationships with certified M/WBE firms. The second page of the form should list the M/WBE 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: M/WBE Utilization Waiver Request - This document should be filled out by the bidder if the utilization plan (Form #1) indicates less than the stated participation goal for the procurement. In this instance, Form #2 must accompany Form #1 with the bid. If Form #2 is provided and goal was initially set higher, revised goal approval will be necessary from DOB. When completing Form #2, it is important that the bidder thoroughly document the steps that were taken to meet the goal and provide evidence in the form of attachments to the document. The required attachments are listed on Form #2 and will document the good-faith efforts taken to meet the desired goal. A bidder can also attach additional evidence outside of those referenced attachments. Without evidence of good-faith efforts, in the form of attachments or other documentation, the Department of Health may not approve the waiver and the bidder may be deemed non-responsive.

New M/WBE firms are being certified daily and new M/WBE 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 M/WBE Firms in this online system once payments to these vendors commence.

Form #4 – M/WBE 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 M/WBE goal achievement.

Form #5 – EEO and M/WBE Policy Statement

This is a standard EEO policy that needs to be signed, dated and submitted. If Bidder has their own EEO policy it may be submitted instead of endorsing this document.

- M/WBE Form #1 -

**New York State Department of Health
M/WBE UTILIZATION PLAN**

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

Description of Plan to Meet M/WBE Goals

PROJECTED M/WBE USAGE

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

“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 M/WBE utilization.”

**New York State Department of Health
M/WBE UTILIZATION PLAN**

MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION

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

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

**New York State Department of Health
M/WBE UTILIZATION PLAN**

WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION

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

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

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

Applicant/Grantee : Click here to enter text.	Federal Identification No.: Click here to enter number.				
Address: Click here to enter text.	Solicitation/Contract No.: Click here to enter number.				
City, State, Zip Code: Click here to enter text.	M/WBE Goals: MBE % % % WBE % % % (From Lines 2&3 of Form 1)				
By submitting this form and the required information, the officer or/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.					
Contractor is requesting a : <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. Total / Partial (circle one) <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. Total / Partial (circle one) <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development: Click here to enter a date.					
<u>If a total or partial waiver is requested, appropriate supporting documentation as outlined in the Detailed M/WBE Form Instructions is required.</u>					
<hr/> PREPARED BY (Signature) _____ Date: _____ SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR’S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.					
Name and Title of Preparer (Printed or Typed):	Telephone Number:				
Email Address:					
Submit with the bid or proposal or if submitting after award submit to: doh.sm.M/WBE@health.ny.gov	<div style="text-align: center; border: 1px solid black; padding: 2px;"> ***** FOR DMWBD USE ONLY ***** </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 5px;">REVIEWED BY:</td> <td style="width: 30%; padding: 5px;">DATE:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ </td> </tr> </table>	REVIEWED BY:	DATE:	Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____	
REVIEWED BY:	DATE:				
Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____					

**- 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 M/WBE 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 –
New York State Department of Health
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.

Name & Title

Signature & Date

EEO

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

DETAILED M/WBE FORMS INSTRUCTIONS
For-Profit Bidders/Applicants

Form #1 – M/WBE Utilization Plan

Page#1 of Form#1:

Description of Plan - Describe any steps/details that support Bidder/Contractor plan to meet the M/WBE 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 M/WBE 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 to be paid to a Certified Woman-owned Business Enterprise and states the percentage this amount is of the Total Value listed on Line #1.

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 – M/WBE Combined totals - Bidder/Contractor totals Line #2 and Line #3 for both Percentage and Amount to state the Combined M&W percentages and Combined M&W amount.

Example: Using the above Line #2 and Line #3 examples for payment data, Bidder/Contractor achieves a combined M/WBE % of 30% and a combined M/WBE amount of \$300,000. (15%M and 15%W; \$150,000M + \$150,000W). M/WBE combined Total/Total Dollar Value Eligible = the M/WBE % (300,000/1,000,000 = 30%).

Page#2 of Form#1:

The first column (left column): Bidder/Contractor lists any Minority-owned Business Enterprises (MBE) that Bidder/Contractor is 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.

The 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 – M/WBE Utilization Waiver Request

“Form#1 M/WBE Utilization Plans” that commit to a goal % less than the stated M/WBE goal percentage in procurement must be accompanied by a “Form#2 M/WBE Utilization Waiver Request”. A Bidder/Contractor may qualify for a partial or total waiver of the M/WBE 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 from 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. Directly below the Pending ESD Certification area, 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 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 M/WBE(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 M/WBE(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 Bidder/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 6
NEW YORK STATE DEPARTMENT OF HEALTH
Encouraging Use of New York Businesses in Contract Performance

I. Background

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

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

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

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

II. Required Identifying Information

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

Will New York State Businesses be used in the performance of this contract? YES NO

If yes, identify New York State businesses on page 2 of Attachment 6 that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.

Business Name	Business Address	Contact Name	Contact Phone	Contact Email Address

Attachment 7
Sample Standard New York State Contract Language and Appendices
MISCELLANEOUS / CONSULTANT SERVICES

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

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

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

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

CONTRACTOR

STATE AGENCY

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

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

STATE OF NEW YORK)
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

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

Attachment 8
NEW YORK STATE DEPARTMENT OF HEALTH
HIV SURVEILLANCE AND PARTNER SERVICES
ATTESTATION OF CONFIDENTIALITY
FOR STAFF WHO WORK WITH HIGHLY CONFIDENTIAL DATA

As an employee of New York State, Health Research Inc., a local health department or as a visiting professional, student or subcontracted employee, I understand that I may have access to highly confidential and/or identifying information on persons reported as part of routine or special surveillance projects and/or HIV partner services to the New York State Department of Health (NYSDOH) as a consequence of my work.

Highly confidential or identifying information includes, but is not limited to, names, initials, date of birth, date of death, social security number, medical record or insurance number, NYS Department of Corrections and Community Supervision identifier (NYSID/DIN), address, telephone number, medical conditions, identifying tattoos/scars, and any combination of these. As a consequence of my work, I may have access to protected and identifying information from electronic data, paper records, or information obtained during an interview. Information may originate from records of hospitals, laboratories, health care providers, medical/health clinics, drug treatment centers and correctional facilities.

I hereby acknowledge that I have received training regarding the “New York State Department of Health’s Confidentiality Policies and Procedures for Staff Conducting HIV/AIDS Surveillance and HIV Partner Notification Activities” and will abide by all appropriate laws, regulations and protocols regarding the confidentiality of protected information. Illegal procurement or disclosure of HIV information is punishable by a fine of up to \$5,000 per occurrence. Willful violations are punishable by imprisonment of up to one year. If I am a New York State or Health Research, Inc. employee, I understand that any violation of these rules will be documented and that I may be subject to disciplinary action, including discharge from my position. If I am a consultant/contractor or have access to these data in another capacity, I understand that violations will be pursued as allowed by the laws of New York State.

Please check here if you are a NYEHMS user.

By initialing the following statements and signing this attestation, I agree that:

INITIAL BELOW:

_____ I will never discuss, release or divulge any information that could identify persons reported except to authorized persons and in the performance of my job-related duties. I will conduct telephone calls that require the discussion of identifying information as discreetly as possible, only within a protected and private area and out of hearing range of unauthorized persons to protect against disclosure of confidential information.

_____ I will not use cell, mobile or cordless telephones to discuss identifying information. Staff authorized to use cellphones for the conduct of their work should abide by program specific operational procedures to protect against disclosure of confidential information. I will handle highly confidential data as discreetly as possible and I will keep confidential data with which I am working out of the view of unauthorized persons.

_____ I will not receive unauthorized visitors in the restricted access area in which I work, unless they are announced and all identifying and confidential materials are properly secured. All highly confidential data and files will be kept in a double-locked file cabinet except when in use.

_____ To prevent unauthorized access, I will “lock” my computer when I temporarily leave my workstation and will log off my computer at the end of each day.

_____ I will encrypt and password protect electronic files containing personally identifying data and store such data in the appropriately secure location on the LAN. When no longer needed, electronic documents must be permanently deleted per the NYSDOH required procedures.

_____ I am responsible for preventing unauthorized access to or use of my keys, passwords, authentication token and alarm or access codes.

_____ I will not share my authentication token, passwords or access/alarm codes with anyone.

_____ I will not allow software to retain my password (auto connect).

_____ I will not copy, write, download, or store any highly confidential data to a local hard drive or portable media (including but not limited to floppy disk, CD, zip or flash drive).

_____ I will not remotely access highly confidential information.

_____ I will not fax any highly confidential HIV Surveillance or Partner Services information.

_____ I will not e-mail any highly confidential or identifying data.

_____ Any transfer of protected and identifying data will be done via the secure file transfer utility (FTU) on the NYSDOH Health Commerce system (HCS) or the Center for Disease Control and Prevention (CDC) Secure Data Network (SDN) using the appropriate encryption and only to authorized persons.

_____ When transporting information that is highly confidential I will employ appropriate security measures to ensure that the material remains protected, including delinking personally identifying information.

_____ I will shred any document to be disposed of that contains personal identifiers using a crosscut shredder within the restricted area.

_____ Reports, records or information may be released only in accordance with established policies.

_____ I will notify my supervisor of all suspected and actual breaks in protocol and breaches of confidentiality immediately.

_____ Any exception to these policies must have written pre-approval of the Director of the Division of HIV/STD Epidemiology, Evaluation and Partner Services, or the AIDS Institute Director or his/her designee.

_____ I understand and agree that I am bound by these policies, even upon resignation, termination or completion of my activities.

Bureau/Division/Regional Off/County or Firm

Building and Room No./ City

Employee Name (Please Print)

Employee Signature

Email Address

Please check the box that applies to your status:

State/HRI County Partner Services Other (please specify) _____

I hereby certify that I have provided training for this employee on confidentiality and have provided a copy of pertinent New York State laws, regulations and policies regarding confidentiality.

Trainer's Signature

Date

Attachment 9

IFB COVER SHEET

NEW YORK STATE DEPARTMENT OF HEALTH

AIDS Institute

Office of Administration and Contract Management

INVITATION FOR BID (IFB)

Epidemiologic and Program Evaluation Assistance

IFB No. 17745

Organization: _____

Federal Employer ID#: _____

Agency Vendor ID#: _____

Address: _____

Contact Person: (please print or type) _____

Title: _____

Telephone Number: (____) _____

Fax Number: (____) _____

E-mail Address: _____

x _____

Hand Written Signature of Individual Authorized to Apply for the Organization

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 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.

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

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.

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
Email: M/WBECertification@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: _____ Date: _____

(Signature)

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: _____ Date: _____

(Signature)

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: DOHaccountspayable@ogs.ny.gov with a subject field as follows:
Subject: <<Unit ID: 345XXXX>> <<Contract #>>
(Note: do not send a paper copy in addition to your emailed voucher.)
 2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:
NYS Department of Health
Unit ID 345<<xxxx>>

State of New York Agreement Page 1 of 3

PO Box 2093
Albany, NY 12220-0093

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

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

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/vendors/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 or property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.

- i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
- ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
- iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

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

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

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

Instructions for Certification

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

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

Y. Confidentiality Clauses_

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

Z. Provision Related to Consultant Disclosure Legislation_

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; and
 - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and

c. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.

AA. Provisions Related to New York State Procurement Lobbying Law: The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

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

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

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
3. Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that

should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract.

During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

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

FF. CONFLICTS OF INTEREST

1. The CONTRACTOR has provided a form (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

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees.

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 this 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.

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 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.

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

APPENDIX 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 (“M/WBE 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 (“M/WBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises (“M/WBE”) participation, 0% for Minority-Owned Business Enterprises (“MBE”) participation and 0% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by M/WBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified M/WBEs found at the following internet address:
<http://www.esd.ny.gov/M/WBE.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 M/WBEs on the Contract.

- C. Where M/WBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by M/WBEs 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 M/WBE 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 M/WBE 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. M/WBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an M/WBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such M/WBE Utilization Plan for the performance of M/WBEs on the Contract pursuant to the prescribed M/WBE goals set forth in Section III-A of this Appendix.
- A. Contractor further agrees that a failure to submit and/or use such M/WBE 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 M/WBE 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 M/WBE Utilization Plan and updated Quarterly M/WBE 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 M/WBE Contract Goals.

VI. Quarterly M/WBE Contractor Compliance Report

- A. Contractor is required to submit a Quarterly M/WBE Contractor Compliance Report to the New York State Department of Health by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the M/WBE goals of the Contract. Data should be submitted via the online compliance system at <https://ny.newnycontracts.com>.

VII. Liquidated Damages - M/WBE 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 M/WBE 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 M/WBEs had the Contractor achieved the contractual M/WBE goals; and
 2. All sums actually paid to M/WBEs 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.