

NEW YORK STATE DEPARTMENT OF HEALTH

A Request for Proposals for

Division of Chronic Disease Prevention
Bureau of Tobacco Control

RFP No. 16622

New York State Smokers' Quitline

Schedule of Key Events

RFP Release Date	May 11, 2016
Written Questions Due	May 26, 2016
Letter of Interest Due (optional)	May 26, 2016
Response to Written Questions (on or about)	June 15, 2016
Proposal Due Date	July 14, 2016 by 4:00PM ET
Anticipated Contract Start Date	February 1, 2017 (new vendor) May 1, 2017 (incumbent vendor)

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

DESIGNATED CONTACTS:

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

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A. INTRODUCTION

The New York State Department of Health (DOH) Bureau of Tobacco Control (BTC) administers a comprehensive tobacco control program focused on policy and health systems change to reduce the negative impact of tobacco use in New York State (NYS). The program comprises statewide and community action contractors, health systems change contractors, health communications strategies and telephone Quitline and web-based Quitsite services. Quitlines typically provide evidence-based quit assistance to tobacco users with few resources. As part of coaching assistance in NYS, Quitline services are also expected to complement other health system change efforts, for example, by providing insurance benefit information to callers, encouraging callers to discuss quitting with their health care provider and reconnecting callers who are referred to the Quitline back to their providers for continued care. The Quitline and Quitsite provide evidence-based cessation services including coaching by phone, approved medications to some callers and informational services for New Yorkers trying to quit smoking, those who have recently quit smoking and persons supportive of these individuals.

State and local paid health communications are frequently tagged with contact information for the Quitline. Quitline and Quitsite services described here are consistent with CDC's *Best Practices for Comprehensive Tobacco Control Programs (2014)*.

DOH seeks proposals to provide telephonic and internet-based information and tobacco use cessation services to NYS residents seeking 1) information on quitting tobacco use and 2) coaching assistance with quitting tobacco use or maintaining quit status. DOH will award one (1) contract as a result of this RFP for a term of five (5) years and three (3) months, anticipated to start on the date shown in the Schedule of Key Events if awarded to a new vendor to allow for a three (3) month transition period from the previous vendor to the new vendor. Should the current contract holder be awarded, the contract term will be five (5) years. The estimated annual budget amount available is up to \$4.5 million annually for each of the five (5) years.

Primary deliverables for this contract include:

1. Statewide Tobacco Cessation Quitline
2. New York State Smokers' Quitsite
3. Quitline Marketing and Outreach
4. Nicotine Replacement Therapy (NRT) Storage and Shipment Services
5. Quality Improvement and Evaluation

B. BACKGROUND

Preventing tobacco use is one of the most important public health actions that can be taken to improve the health of New Yorkers, as tobacco use is the leading preventable cause of morbidity and mortality. Each year, over 28,000 New Yorkers die prematurely as a result of a smoking-related illness. More than half a million New Yorkers currently suffer from serious diseases caused or exacerbated by tobacco use. Smoking is a major cause of multiple cancers, heart disease, stroke and other respiratory diseases. The toll of tobacco use is disproportionately higher among people with less education, lower income and poor mental health. These groups have higher smoking rates and greater exposure to secondhand smoke and, as a result, suffer more illness, disease and premature death.

Youth are vulnerable to experimenting with tobacco, and the vast majority of adult smokers began smoking when they were teens. In a 2014 survey, 7.3 percent of NYS high school students (65,000 students) reported smoking a cigarette at least one day in the past 30 days. Among adults who become daily smokers, nearly 90 percent of all first use of cigarettes occurs by 18 years of age, with 99 percent of first use occurring by 26 years of age.

In addition to the high personal and societal toll associated with tobacco use, the financial costs of tobacco in NYS are enormous. NYS spends an estimated \$10.4 billion annually on medical expenditures for smoking-related disease. Those costs increase when health care expenditures caused by exposure to secondhand smoke, smokeless tobacco use, cigar and pipe smoking, smoking-related fires and lost productivity are included.

DOH envisions all New Yorkers living in a tobacco-free society. DOH's mission is to reduce morbidity and mortality, and the social and economic burden caused by tobacco use. Evidence-based tobacco control programs and policy interventions can reduce this burden. The goals of BTC's comprehensive tobacco control program are to prevent the initiation of tobacco use among youth, promote tobacco use cessation among adults and eliminate exposure to secondhand smoke. Disproportionately affected groups, including individuals with low socioeconomic status (low income and low education) and persons with poor mental health, are a primary focus of the program.

To achieve these goals, BTC administers a comprehensive tobacco control program built on the well-established science of tobacco control. The evidence-based interventions are population-level focusing on policy and systems change. Policy and systems interventions change the environment to one in which tobacco is less desirable, less acceptable and less accessible, and evidence-based treatment is widely available. The components of BTC's comprehensive program include tobacco-free community contractors, health systems change contractors, health communications (media), and cessation support and services provided primarily through a telephone Quitline and Internet Quitsite.

Cessation Support and Services

DOH funds the New York State Smokers' Quitline (Quitline), which provides cessation coaching, information and referral services to NYS residents who call the toll-free number 1-866-NY-QUITS (1-866-697-8487) or visit the Quitsite at www.nysmokefree.com. The Quitline also provides individual cessation services and information to employers and health care providers as part of the BTC's population-based systems change model. The Quitline works with DOH, its community contractors and the health care community to increase health care provider delivery of tobacco dependence treatment and tobacco users' access to cessation counseling and medication. As an integral component of health systems change, the Quitline informs and assists clients with accessing available health insurance cessation benefits. Quitline staff encourage callers to talk to their health care provider about cessation, educate providers on available guidelines to assist patients with quitting, and work as a clinician extender by accepting health care providers' referrals to extend quit support to their patients. Quitline and Quitsite services are described in detail below.

C. DETAILED SPECIFICATIONS

1. Scope of Work

The contractor is expected to fully meet and maintain the five (5) primary program deliverables and all sub-deliverables described in this section and maintain the staffing to perform the tasks described in the scope of work.

Program Deliverable 1 – Statewide Tobacco Cessation Quitline

The contractor will establish and maintain a statewide tobacco cessation Quitline that serves as a convenient telephone-based resource to tobacco users by:

- Providing cessation related information and support materials including information about smoking cessation benefits available to callers through their health insurance plan;
- Providing coaching assistance;
- Disseminating information on cessation medications (including prescription and over-the-counter medications);
- Offering access to and provision of cessation medication to Medicaid enrollees, uninsured, and others who have financial barriers as appropriate and available; and
- Providing referrals for more intensive treatment as appropriate, including referrals to callers' primary care providers.

The above will be supported by the core functions of providing qualified personnel, facilities, training and equipment necessary to provide a telephone-based Quitline service. Optimally, the system will be able to handle multiple, simultaneous incoming and outgoing calls with multilingual capability. Management shall include a medical director to oversee and ensure the integrity of policies and procedures of the Quitline throughout the course of the contract period. Baseline qualifications for core call center staff include never or former smoker, strong customer service and communication skills, and the ability to triage a large number of incoming calls while maximizing phone utilization time, client centered motivational interviewing skills and the skills to build rapport with callers and display empathy are necessary. The ability to speak another language would be desirable as well.

Office space should accommodate administrative, coaching and support staff, and confidential records, as well as sufficient telephone lines, telephones and computer hardware and software. Telecommunications Device for the Deaf (TDD) lines should be available to provide services to the hearing impaired. This system will be capable of responding to an expected increase in calls as a result of media or other Quitline promotion. DOH will notify the Quitline vendor at least two (2) weeks prior to the scheduled start of any major promotional campaigns. The Contractor will have a plan in place for monitoring Quitline capacity to avoid situations where a Quitline coach cannot answer a call. The Contractor will have a clear plan for managing large unanticipated increases in call volume and Quitline referrals.

Quitline Services:

Year 2014 Approximate Call Volume to NYS Smokers' Quitline

Coach Assisted	DOCCS Coach Assisted	Non-Coach Assisted:	
		Taped	Voice Message
100,000	1,600	2,388	6,671

Notes:

"Coach assisted" calls are those where individuals actually spoke with a coach and include coaching consultation, general information and callbacks.

"DOCCS coach assisted" calls are those where individuals incarcerated in the NYS correctional system spoke with a coach via the collect call line.

"Taped message" calls are those where the individual chooses to listen to prerecorded informational or motivational messages.

"Voice message" calls are those where individuals request mailed information or request a coach to return their call.

Non-Coach Assisted Calls

- Non-Coach assisted calls refer to those calls where individuals chose not to speak with a coach and selected to either listen to a taped message or leave a voice mail message.
- Calendar year 2014 data shows that 2,388 callers requested only to listen to taped messages and the Tip of the Day and 6,671 callers left a voice mail message to request a mailing or have a coach return the call. Non-Coach assisted calls totaled 9,059 in calendar year 2014 (See summary table above).

Coach Assisted Calls: In calendar year 2014, Quitline coaches provided services on approximately 100,000 occasions (See summary table above). Coach Assisted calls include the following:

- Coaching Consultation: This will consist of one (1) or two (2) telephonic coaching sessions per smoker, up to 30 minutes each. The number of calls (one or two) will be determined by discussion between the coach and the smoker. The first coaching session will include collection of intake information about the caller's readiness to quit and screening for cessation medication eligibility. Coaching sessions, either initial or follow-up, may include development of a quit plan, quit tips, information, problem solving, strategies for managing cravings and other evidence-based coaching strategies. For tobacco users not ready to quit, the coaching will include a description of services, motivational coaching and informational materials. For tobacco users who already quit, coaching will include relapse prevention and informational materials.
 - The initial call will be followed by mailing of informational materials and tobacco cessation medication as appropriate. There will also be orientation to Internet-based cessation resources, the use of telephonic recorded informational and motivational messages, and encouragement to talk with a health care provider about quitting tobacco.
 - All tobacco users will be encouraged to follow-up with their personal health care provider. For friends and family of tobacco users, Quitline coaches will provide brief advice on helping a tobacco user quit, offer to mail informational materials and provide information about the web-based NYS Smokers' Quitsite.

- **General Information Calls**
 - For callers with private or Medicaid Managed Care health insurance or known coverage of tobacco dependence treatment by the health insurance plan, coaches will provide the Quitline service and/or warm transfer to the health plan cessation program when the health plan offers more services than the Quitline. For callers with no health insurance, coaches will provide the Quitline service and refer callers to NYS’s Health Benefit Exchange Marketplace, NY State of Health.
 - For clinicians and health care providers, coaches will describe the electronic referral program, arrange participation in the program as desired and mail informational materials, including printed cessation materials.
 - For other callers, coaches will provide a brief appropriate response. Other callers include media inquiries requesting information and interviews (to be referred to DOH), complaints about media messages and Quitline services (to be documented and reported to DOH), requests for referral to and/or information regarding local cessation services and others.

- **Callback Calls**
 - Quitline staff will manage inquiries from voice messages, referrals from health care professionals and the established Quitsite (See Deliverable 2), and respond based on the request made.
 - If the inquiry is from a tobacco user, the response will be either placing an outbound call to determine and respond to service needs, providing information about service options via email, fulfill requests for cessation medication products following a coaching session and/or mailing of self-help materials.
 - If the inquiry is from a health care professional, the response will include either placing an outbound call to determine service needs, providing information via email or mail on service options or other health care professional information.
 - If a referral has been made to the Quitline by a health care provider, coaches will place outbound calls to the tobacco user and offer appropriate Quitline services and follow-up calls. An acknowledgment and a follow-up summary report will be sent to the referring health professional.
 - In calendar year 2014, in response to voice messages, referrals from health care professionals, and Quitsite inquiries, coaches completed 6,255 outbound calls. (As noted above, this outbound call number is included in the 100,000 coach-assisted call total).

Summary of Year 2014 Outgoing Calls (Callback i.e., Clients Reached)

Referral calls	Voice Message & Quitsite Inquiry	Total Outgoing calls completed
4,831	1,424	6,255

Notes:

“Referral calls” are in response to a referral made to the Quitline by a health care provider.

“Voice Message & Quitsite Inquiry ” are in response to inquiries on the Quitsite or voice messages requesting a coach return their call.

Department of Corrections and Community Supervision (DOCCS) Coaching Consultation

- The contractor will establish a dedicated collect call phone number for approximately 1,600 callers incarcerated in NYS Department of Corrections and Community Supervision (DOCCS) facilities. A special arrangement was created with DOCCS to allow Quitline access by inmates. DOCCS inmates call via the collect call line and receive coaching services and provision of NRT the same as other callers.

All Quitline protocols are to be reviewed and approved by DOH. The actual call volume may vary.

Contract Deliverables:

Telephone Services:

1. Within the first 90 days of contract start date, develop systematic and evidence-based protocols for delivering Quitline services that offer coaching assistance, medication eligibility, quit plan development and information to tobacco users at various stages of readiness to quit tobacco use and for those already quit but concerned about relapse to be delivered by Quitline staff.
2. Within the first 90 days of contract start date, develop voicemail, recorded messages and tips, and messages for managing, triaging and servicing calls during hours when the Quitline is not staffed.
3. Within the first 90 days of contract start date, develop a system for providing technical assistance to medical professionals, employers and health plans on how to promote and use Quitline services including electronic referrals, telephonic services and online resources, while promoting evidence-based assistance with quitting among health care providers.

Call Center Operations:

4. Within the first 90 days of contract start date, identify and hire staff with the appropriate competencies to implement the full range of services for which they are applying. (See Section D. Proposal Requirements, 1. Technical Proposal Requirements, V. Staffing).
5. Establish within the first 90 days of contract start date, and then maintain, the toll-free 1-866-NY-QUITS (1-866-697-8487) phone number, offering telephonic services in English and Spanish as well as an automated language translation service. Establish and maintain a dedicated collect call phone number for callers incarcerated in NYS Department of Corrections and Community Supervision (DOCCS) facilities.
6. Establish within the first 90 days of contract start date, and then maintain the following call center hours of operation: Monday through Thursday from 9:00 a.m. to 9:00 p.m. and Friday, Saturday, and Sunday from 9:00 a.m. to 5:00 p.m., except federal holidays. DOH reserves the right to change Quitline hours based upon demand for services due to the media campaign. The contractor will provide modified Quitline hours as requested by DOH. There will be no additional reimbursement for the changed hours beyond the price paid per call.

7. Upon completion of the initial 90 day transition period (**if new contractor**) deliver Quitline services through live Quitline specialists during the hours of operation with a wait time of less than 30 seconds, an abandonment rate of less than 5% after the 30 second threshold, and quit rate prevalence of 20% for tobacco users who received coaching and materials only and 30% for tobacco users who received coaching, materials and tobacco cessation medication. If incumbent contractor, services to begin upon contract start date.
8. Within the first contract year, establish an information and data management system to facilitate easy and comprehensive documentation of each call, appropriate services provided to each caller and disposition of each call. All calls are tracked, recorded and archived.
9. Assure appropriate staff attend DOH, state and national meetings and conferences. Bidder should budget for annual travel to at least one (1) two-day Albany meeting, one (1) regional meeting and one (1) three-day national meeting.
10. Within the first 90 days of contract start date, establish dues paying membership in the North American Quitline Consortium (NAQC), which will be maintained over the life of the contract.

Program Deliverable 2 – NYS Smokers’ Quitsite

The Contractor will establish and maintain a website that serves as a clearinghouse for tobacco use cessation resources and as an Internet-based Quitsite for tobacco users seeking assistance with quitting. The website will have sections for at least three (3) audiences: 1) tobacco users looking for help quitting, 2) health care professionals and 3) health plans, employers, schools and universities. All online services, posted content, and materials will also be available in Spanish. The Quitsite will include links to other NYS and national tobacco use cessation and prevention-related websites. This includes a link to DOH’s health plan marketplace, NY State of Health, website at <https://nystateofhealth.ny.gov/>.

The website will have tobacco cessation medication ordering information. Online tobacco cessation medication requests must be followed by an eligibility determination and a Quitline coaching session by telephone prior to fulfillment. The website will allow visitors to request a call from a Quitline coach (these Quitsite follow up calls are included in the 100,000 coaching call total referenced in Program Deliverable 1 above). Visitors seeking a call from the Quitline or requesting tobacco cessation medication will receive a response within two (2) business days. The Quitsite will have the capability for health care providers, employers and partnering health organizations to electronically refer tobacco users for services.

Tobacco cessation resources, website, associated materials and services, and protocols developed for the Quitsite will be pre-approved by DOH (if new contractor). If incumbent, any updates or changes will need DOH approval.

Contract Deliverables:

1. Establish within the first 90 days of contract start date, and then maintain an Internet-based clearinghouse for NYS residents to access and obtain printed or local tobacco use cessation resources, to learn about cessation services in NYS and to provide information to health plans, employers and schools about the benefits of tobacco cessation.

2. Establish within the first 90 days of contract start date, and then maintain an Internet-based Quitsite established for NYS smokers and tobacco users seeking assistance with quitting and health care professionals.
3. Establish and maintain the Quitsite in English and Spanish.
4. Establish within the first 90 days of contract start date, a system or utilize existing commercial services available to track use of Quitsite services (i.e., number of log-ins, minutes spent on Quitsite, etc.) and provide reports on metrics.
5. Establish and implement within the first 90 days of contract start date, a coach call back protocol for those individuals requesting tobacco cessation medications online and a tobacco cessation medication eligibility determination (as set forth in Section C.1. Program Deliverable 1, #1).
6. Establish within the first 90 days of contract start date, an online referral system for health care provider organization, employers, health plans, etc. to refer tobacco users to the Quitline for services.
7. Establish within the first 90 days of contract start date, a process to ensure the website(s) will comply with the NYS Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications at: <http://its.ny.gov/document/accessibility-web-based-information-and-applications-compliance-reporting>.
8. Upon contract approval, DOH will provide the contractor with a DOH branding template and coding that the contractor will need to use for the Quitsite header and footer. The contractor will be responsible for applying the template and coding and then submitting for DOH approval within the first 90 days of contract start date.
9. General Security Requirements

Within the first 90 days of the contract start date, the contractor must provide to the Department a security plan that describes their security and compliance with all applicable NYS policies and standards (the list below highlights the most pertinent items):

- All policies and standards defined in the New York State ITS security policies and standards (<http://its.ny.gov/eiso/policies/security>), including, but not limited to:
 - NYS-P10-006 – Identity Assurance Policy,
 - NYS-S13-001 – Secure System Development Life Cycle Standard,
 - NYS-S13-002 – Secure Coding Standard (if applicable),
 - NYS-S13-004 – Identity Assurance Standard,
 - NYS-S14-003 – Information Security Controls Standard,
 - NYS-S14-005 – Security Logging Standard,
 - NYS-S14-007 – Encryption Standard,
 - NYS-S14-013 – Account Management / Access Control Standard
 - NYS-S15-001 – Patch Management Standard (if applicable) and
 - NYS-S15-002 – Vulnerability Scanning Standard

Program Deliverable 3 - Quitline Marketing and Outreach

Marketing and Outreach consists of the following:

1. Developing an annual plan for promoting the Quitline and Quitsite to key members of the health care community and other tobacco control stakeholders, which also includes a component that leverages the unique position of the Quitline and uses earned media opportunities to further awareness and utilization of Quitline offerings.
 - a. The Contractor will establish the infrastructure to develop and support an annual plan for promoting Quitline telephonic and Quitsite web-based services and referral systems to the NYS health care provider community (including, but not limited to):
 - Community health centers (CHCs), federally qualified health centers (FQHCs),
 - Mental health/behavioral health service organizations,
 - Other health care provider organizations that provide services to people with low income and low education, and persons with poor mental health,
 - Health Systems for a Tobacco-Free NY contractors,
 - Health care providers,
 - Employers,
 - Health insurance plans, Medicaid Managed Care plans and the NY State of Health marketplace initiative,
 - NY e-health collaborative statewide and regional centers, and
 - Statewide organizations such as the Community Health Center Association of NYS (CHCANYS), Medical Society for the State of NY (MSSNY) and NY Association of Psychiatric Rehabilitation Services (NYAPRS).
 - b. The Contractor will have, or establish, the infrastructure to develop and implement a plan to position the NYS Smokers' Quitline as an expert on tobacco cessation and tobacco dependence treatment systems change. The plan will frame the work of the Quitline as a key strategy of the NYS Tobacco Control Program. Tools to be used include press releases, news briefs, newsletters, engagement of personal stories and other creative techniques. As a result of these efforts, the Quitline Contractor will be an important source to localize national and state stories regarding tobacco use, cessation and the health consequences of tobacco use, and be prepared to respond to media inquiries.
2. Printing and widely distributing materials that can be used to educate the community and the health care system about tobacco use, treatment options and role of the Quitline.
 - a. The contractor will develop and produce/print informational materials.
 - i. The informational materials will be for specific audiences, including tobacco users at various stages of readiness to quit, tobacco users already quit, friends and family of tobacco users, clinicians and health care providers seeking to help patients quit using tobacco, and the media and community members interested in learning more about tobacco cessation.
 - ii. The informational materials will include those relevant to the specific audiences and topics, including, but not limited to coping with nicotine withdrawal and smoking triggers, smoking relapse prevention, helping a smoker quit, secondhand smoke, smoking cessation medications (including Medicaid coverage), smoking and pregnancy, youth and smoking, and the electronic referral program.

- b. Historically, there has been at least one (1) glossy trifold brochure, and five (5) new one (1) page fact sheets developed per year. This is an estimate and the actual number of materials developed may vary. Approximately 69,400 informational material packets will be produced and assembled for shipping annually. The materials will be submitted to DOH for review and approval prior to use. All materials will also be available in Spanish.

Contract Deliverables:

1. Develop and implement an annual marketing and outreach plan within 90 days of the start of each contract year to promote Quitline telephonic and Quitsite web-based services and referral systems to the NYS health care provider community.
2. Within 90 days of the start of the contract, establish the infrastructure to develop and implement a plan to position the NYS Smokers' Quitline as an expert on tobacco cessation, and tobacco dependence treatment systems change, with the major media outlets in NYS.
3. Draft culturally appropriate and topic-relevant materials and submit to DOH for approval and then professionally mass produce.

Program Deliverable 4 – Nicotine Replacement Therapy Storage and Shipment Services

The Quitline Contractor will store and distribute, as appropriate, cessation medication (nicotine replacement therapy (NRT) for eligible callers (See Section C.1. Program Deliverable 1, #1 for a description of the protocol required to determine eligibility for medication). In 2014, about 62,600 two-week starter kits of NRT were sent to New Yorkers. NRT products will be purchased and provided to the Contractor by DOH. The Contractor will establish a protocol with the DOH contract liaison to order sufficient NRT products for the Contractor to provide timely fulfillment to qualified Quitline and Quitsite clients as identified in Deliverable 1.

The contractor will also store and send informational materials with NRT starter kits and alone, as necessary. The informational materials will be assembled in packets for specific audiences, including tobacco users at various stages of readiness to quit, tobacco users already quit, friends and family of tobacco users, clinicians and health care providers, and the media and community members interested in learning more about tobacco cessation. Approximately 69,400 informational material packets are shipped annually. For cost purposes, about 62,600 informational packets are shipped with NRT and 6,800 informational packets are shipped alone.

Contract Deliverables:

1. Within the first 90 days of contract start date, the contractor will be prepared to receive and store cessation medication in a secure/locked facility that maintains all manufacturer requirements, including proper temperature and humidity standards.
2. Within the first 90 days of contract start date, establish a protocol for projecting cessation medication needs, ordering of product and maintaining sufficient supply based on anticipated client needs.
3. Within 90 days of the contract start date, establish a management system for distributing information and materials to the individuals described in Program Deliverable 1 and Program

Deliverable 2, including a system to mail appropriate written materials.

4. Ship cessation medication and relevant informational material to approximately 62,600 individuals annually via first class mail within two (2) business days of Quitline call or Quitsite visit.
5. Ship informational materials, without NRT, to approximately 6,800 individuals via first class mail within two (2) business days of Quitline call or Quitsite visit.

Program Deliverable 5 – Quality Improvement and Evaluation

The contractor shall implement a Quality Improvement Plan and provide feedback to DOH. A quality improvement plan is the foundation for providing quality telephonic and web-based services and shall be based on Quitline and Quitsite data, identified needs, problems and/or issues. As part of the Quality Improvement Plan, the contractor will provide training(s) for Quitline and Quitsite staff conducted by individuals that have knowledge and experience to effectively deliver training information to staff.

Annually, the contractor will submit a written quality improvement plan that addresses (at a minimum) the following topics:

1. Quality of caller education materials in print and on the website;
2. Effectiveness of computer technology, telephone system and website in supporting the work of the Quitline;
3. Program for oversight and interventions based on various supervisory techniques such as a manager “listen-in”;
4. Effectiveness of staff training programs (match between training objectives and staff performance);
5. Assessment of cost per call, wait times and abandonment rates;
6. Tracking of call center metric, including, but not limited to unanticipated call volumes with data regarding wait times and abandonment rates; and
7. Client satisfaction with services provided and timely complaint resolution.

To support and evaluate Quitline activity and services, the Contractor will deliver to DOH and the tobacco control program’s independent evaluation contractor, data sets and related documentation containing information collected by the Quitline and Quitsite programs and various reports that provide weekly, monthly, quarterly and annual performance data. At a minimum, the Contractor is required to provide the following:

- Quitline data set, including data recorded during intake and coaching session calls, and call disposition;
- Quitsite data set, including participant interaction with the Quitsite;
- Cessation medication data set, including quantity, dosage and shipment dates;
- Data sets required for conducting an external evaluation of quit rates and other performance measures for the Quitline and Quitsite; and
- All information contained in the Minimum Data Set as set forth by the North American Quitline Consortium (NAQC) or all data deemed necessary by DOH and the evaluation contractor from all callers willing to report such data.

All data files should include a single unique identifier, compliant with current Institutional Review Board (IRB) standards, for each caller that allows data from multiple files to be linked together for analysis, and

if necessary, a linking file. The data files should be provided in a common “flat file format” (such as csv or SAS) to allow for ease of analysis and measurement of impact and outcome relative to Quitline and Qitsite activities.

The initial data sets and codebooks will be delivered to DOH by close of the first six (6) months of the project. Subsequent data files will be provided on a regular schedule determined by DOH. For each data file, the Contractor is expected to provide data dictionaries, codebooks and other documentation that thoroughly and accurately describe the data files. The data documentation will be updated by the Contractor as information systems and data elements change. The content for every dataset and all documentation associated with this deliverable is subject to Departmental approval. The Contractor will respond to ad hoc data and report requests as needed by the DOH. Descriptive ad hoc requests (e.g., the number of African-American callers from Albany County) are expected to be delivered to DOH within two (2) business days of the request. For more complex analyses, DOH will work with the Contractor to identify a timeline for report delivery. The service requirements are subject to updates based on contract requirements; therefore the data and reporting requirements may be revised.

At a minimum, the following reports must be provided electronically to DOH by the Contractor:

- Weekly Report
 - Call volumes and website visits by day, cessation medication registration and distribution.
- Monthly Report
 - Call volumes, wait times, abandonment rates, incoming call dispositions, outgoing call dispositions, number and type of calls (e.g. coach assisted, non-coach assisted, etc.), cessation medication distribution, satisfaction data, client demographics and tobacco use history, electronic referral dispositions and Qitsite metrics.
- Quarterly Reports
 - Quarterly summary of Quitline and Qitsite reports.
 - Quarterly Quitline report that identifies the number of unique individuals who participated in the Quitline service during the quarter and the year to date, and since the start of the contract.
 - Reporting quarterly on the annual Marketing and Outreach Plan per Section C.1., Program Deliverable 3.
- Annual Reports
 - Annual summaries of Quitline and Qitsite reports.
 - Identification of progress towards annual performance indicators and benchmarks.
 - Identification of steps taken to improve services for the upcoming year.

The reports will be reviewed at the time of delivery by DOH staff to evaluate the quality of the Contractor’s performance.

The Contractor will also conduct client satisfaction surveys with samples of clients served by the Quitline and Qitsite. The customer satisfaction survey data shall be collected within three (3) months of the initial call to the Quitline or registration in Qitsite services. The Contractor will collect monthly satisfaction data from a representative, random sample of callers and Qitsite registrants. The specific protocols for conducting the client satisfaction surveys, including survey content, will be reviewed and approved by DOH prior to the start of data collection. The staff delivering the Quitline services may conduct the client satisfaction surveys.

The evaluation outcomes to assess program quit rates will be conducted by the tobacco control program's independent evaluator. The Contractor will provide data allowing the evaluator to generate a random sample from all participants and conduct 12-month follow-up surveys with participants of the Quitline Service and Quitsite registrants. Data required for the outcomes evaluation will include, but are not limited to, participant name, unique participant identifier allowing outcome data to be linked to program participation data, telephone number, email address (if provided), mail address and program enrollment date.

Contract Deliverables:

1. Within the first contract year, develop, implement and manage systems to collect, process and store client satisfaction data for Quitline caller and Quitsite registrants.
2. Submit electronic weekly, monthly, quarterly and annual reports to DOH.
3. Within the first 90 days of contract start date, have the ability to provide Quitline data to DOH staff and its independent evaluator, and run reports on these data as requested.
4. Develop and deliver to the tobacco control program's independent evaluator and to DOH, data sets, containing intake, coaching and pharmacotherapy utilization data, in a format and at intervals determined by DOH, including appropriate documentation (e.g., codebooks, variable labels and value labels) to facilitate use of the data sets by the independent evaluator, DOH, or other legitimate researchers who make appropriate data requests to DOH. Outside researchers not connected to DOH or the independent evaluator will receive de-identified datasets.
5. Within the first contract year, develop and implement an annual quality improvement plan that includes (at a minimum) the topics outlined in Deliverable 1 – Statewide Tobacco Cessation Quitline and includes a plan for quarterly reporting on each topic to DOH.
6. Within the first contract year, develop a staff training protocol that will be implemented and managed for the full contract period, by individuals that have knowledge and experience to effectively deliver training information to staff. Each trainer is expected to have a minimum of three (3) years of experience training staff.

2. Eligible Bidders

Eligible bidders include any company or organization that meets the following:

- Bidding organization must have at least three (3) years of experience providing tobacco cessation call center services and at least three (3) years of experience providing web-based tobacco use cessation services.
- Eligible bidders and subcontractors are required to have a written policy prohibiting any affiliation with a tobacco company or tobacco product manufacturer including receipt of gifts, grants, contracts, financial support, in-kind support and other relationships. The selected contractor will ensure that no subcontractors receiving funding through this award have any affiliates with a tobacco company or tobacco product manufacturer.

3. Subcontracting

Bidders may use subcontractors. If subcontractors are known at the time of application, the names should be provided and the work they will perform should be identified in the proposal. All subcontractors and agreements/contracts must be approved by DOH.

4. Location of Call Center

The Quitline call center will be located and operated within the continental United States, Hawaii or Puerto Rico. The bidder should identify the actual or anticipated location, if known.

D. PROPOSAL REQUIREMENTS

Proposals should be signed by an officer authorized to bind the vendor to its provisions.

Bidders should be as succinct as possible when developing their technical proposal. Proposals should be organized to correspond with each outlined item in both Section D.1. Technical Proposal Requirements and Section D.2. Cost Proposal/Official Bid Requirements. The bidder's response should be paginated with a table of contents showing the sections and corresponding page numbers. Details of the submission of proposals are addressed in Section E. 3. Submission of Proposals.

In preparing a proposal, please provide information directly relevant to your organization's ability to successfully administer the services outlined in the RFP. DOH reserves the right to request clarifying information at any time during the process.

Only those bidders who furnish a complete proposal will be considered for final evaluation. Incomplete proposals may be disqualified.

1. Technical Proposal Requirements (75 percent)

The technical proposal is a description of how the bidder meets the Eligible Bidder requirements in Section C. Detailed Specifications 2. Eligible Bidders, and how the bidder intends to accomplish the scope of work and deliverables in Section C. Detailed Specifications of this Request for Proposals.

The Technical Proposal should include all of the following: Sections I – VIII, in the order noted below. **Additional pages provided beyond the maximum noted per section will not be reviewed. No cost information can be included in the Technical Proposal.**

Pages should be single-spaced using a 12-point font or larger with 1-inch margins.

I. Contact Cover Sheet (Attachment 5) completed and signed.

II. Attestation:

Bidder should provide the following attestation:

- Refusal of Funds from Tobacco-Related Entities Attestation (Attachment 9) completed and signed.

Proposal cannot be reviewed until the above attestation is completed and signed.

III. Executive Summary (two (2) pages maximum)

The Executive Summary highlights the contents of the technical proposal to provide DOH with a broad understanding of the entire proposal. The Executive Summary should include:

- A statement that describes the bidder's capacity to maintain a successful smokers' Quitline;
- A brief overview of the proposed Quitline staffing;
- A summary of the scope of services to be provided; and
- A brief overview of the proposed system for collecting, interpreting and reporting telephonic, web-based services data, and customer satisfaction data.

IV. Vendor Capacity and Experience (eight (8) pages maximum)

Describe the bidder's capabilities to perform all of the components outlined in this RFP including a description of the bidder's past and present work providing evidence-based telephonic and web-based tobacco dependence treatment and cessation services, health communications, data collection, report generation, and Quitline and Quitsite services evaluation including the following:

- Describe how the organization meets the required at least three (3) years of experience providing tobacco cessation call center services and the required at least three (3) years of experience providing web-based tobacco use cessation services. **(MANDATORY PASS/FAIL RFP Section C. 2. Eligible Bidders)**;
- Bidder must indicate that the anticipated Quitline call center will be located in the continental United States, Hawaii or Puerto Rico. The bidder should identify the actual or anticipated Quitline call center location if known. **FAILURE TO INDICATE** that the Quitline call center will be in the continental United States, Hawaii or Puerto Rico will result in disqualification. **(MANDATORY PASS/FAIL RFP Section C. 4. Location of Call Center)**;
- Describe additional experience above three (3) years (if any) in delivering tobacco cessation call center services and web-based tobacco cessation services;
- Present a brief history of the organization and how its mission supports the implementation and management of the NYS Smokers' Quitline;
- Describe the organization's experience delivering telephonic and web-based smoking cessation services including technical expertise, call volume and outcome information (e.g., quit rates);
- Describe the organization's capacity and experience with developing and implementing marketing and outreach plans;
- Describe the organization's experience developing and distributing written materials;

- If applicable, describe subcontract(s) that will be secured to fulfill the contract deliverables. If the subcontractor is known, describe the subcontractor(s) experience and capacity to successfully fulfill designated components of RFP;
- Demonstrate an understanding of BTC’s mission and how the bidder will work with the existing tobacco control contractor network to promote telephonic and web-based smoking cessation services;
- Describe the organization’s capacity and experience conducting evaluation;
- Describe the organization’s capacity to comply with DOH requirements for spontaneous data or report solicitation as well as weekly, monthly, quarterly and annual reporting; and
- List all telephonic and web-based smoking cessation services the bidder has managed. Identify the average number of coach-assisted calls per day and the types of services provided.

V. Staffing (three (3) pages maximum, not including items placed in an appendix)

Describe a proposed staffing structure that will adequately meet the program deliverables and outline how internal management of the project will be conducted per Section C. Detailed Specifications. Demonstrate that management includes a medical director and that oversight will be adequate to ensure the integrity of policies and procedures of the Quitline throughout the course of the contract period. Baseline qualifications for core call center staff would include never or former smoker, strong customer service and communication skills, and the ability to triage a large number of incoming calls while maximizing phone utilization time. Client-centered motivational interviewing skills and the skills to build rapport with callers and display empathy are necessary. The ability to speak another language would be desirable, as well.

Include a proposed organizational chart (will not count toward the number of pages). The chart should indicate the location and anticipated supervisory responsibilities of managers and staff to be assigned to the Quitline project. Indicate positions that would be created and the percentage of time each proposed staff member would devote to the contract. Also, indicate the primary work location of staff who will be assigned to the contract. The organizational chart should indicate relationships to a parent company and subsidiaries if any.

In an appendix, provide a job description for *each* position.

VI. Project Plan (20 pages maximum)

Clearly describe a logical, achievable plan for organizing, implementing and accomplishing all contract deliverables. Bidders should propose a comprehensive plan and timeline to meet all of the deliverables associated with establishing and running telephonic and web-based smoking cessation services, including all components of Program Deliverables one (1) through five (5) described above in Section C. Detailed Specifications.

VII. Implementation Plan (two (2) pages)

Provide an Implementation Plan to develop and implement a three (3) month transition plan for a seamless move for both services and technology in collaboration with the current contractor. Describe your transition plan, including a proposed timeline to complete the seamless transition from the current contractor to the winning bidder. The plan should include discussion of continuity of services for enrolled participants prior to transition, call numbers and online services transfer, re-enrollment call back to prior participants, reporting data and the time schedule for full implementation. Additionally, at the end of this proposed contract (see Section E. 6. Term of Contract), the winning contractor will be required to transition all of these same Quitline services to potential future contractors. This section is for program planning purposes only and will not be scored.

VIII. General Security Requirements

Bidder should describe how their proposed solution will comply with any applicable policies, standards, laws and rules, including but not limited to:

- All policies and standards defined in the New York State ITS security policies and standards (<http://its.ny.gov/eiso/policies/security>), including, but not limited to:
 - NYS-P10-006 – Identity Assurance Policy,
 - NYS-S13-001 – Secure System Development Life Cycle Standard,
 - NYS-S13-002 – Secure Coding Standard (if applicable),
 - NYS-S13-004 – Identity Assurance Standard,
 - NYS-S14-003 – Information Security Controls Standard,
 - NYS-S14-005 – Security Logging Standard,
 - NYS-S14-007 – Encryption Standard,
 - NYS-S14-013 – Account Management / Access Control Standard
 - NYS-S15-001 – Patch Management Standard (if applicable) and
 - NYS-S15-002 – Vulnerability Scanning Standard.

IX. Diversity Practices Questionnaire (Attachment 10)

Bidder should submit the Diversity Practices Questionnaire (Attachment 10).

The Department has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement should include as part of their response, **Attachment 10**, “Diversity Practices Questionnaire”. Responses to the questionnaire will be formally evaluated and scored.

2. Cost Proposal/Official Bid and Administrative Materials Requirements (25 percent)

Note: The Cost Proposal/Official Bid and Administrative Materials should be bound separately from the Technical Proposal. The Cost Proposal/Official Bid and Administrative Materials should include

all of the following: Sections I – III, in the order noted below. Bidders for this solicitation are to respond to the following information and the information should be organized as specified below.

I. Contact Cover Sheet (Attachment 5) completed and signed.

II. Completed Cost Proposal/Official Bid (Attachment 6).

Bidder shall submit a five (5) year cost proposal/official bid that includes all costs (including, but not limited to staff salaries, administrative costs, overhead, equipment, training, travel, supplies, etc.) associated with providing the scope of work and deliverables in Section C. Detailed Specifications of this Request for Proposals. Do not include pricing for purchasing cessation medication as it is provided by DOH.

In addition to total costs for the first year of operation, which may include startup costs, the bidder must project the costs for years two (2) through five (5). Bidders must build into the cost proposal/official bid any anticipated increases in costs over time (e.g., due to inflation or increases in staff salaries). Thus, years two (2) through five (5) may reflect an increase at a rate determined by the bidder.

III. Administrative Materials

In addition, the following forms should be submitted with the cost proposal:

- New York State Department of Health Lobbying Form (Attachment 1)
- Encouraging Use of NY Businesses in Contract Performance (Attachment 2)
- Vendor Responsibility Attestation (Attachment 3)
- MWBE Procurement Forms (Attachment 4)

3. Method of Award

Pass/Fail Assessment (Mandatory Requirements)

All proposals will be reviewed to ensure that minimum criteria are met.

- Technical and Cost Proposal/Official Bid packages must be received at the address stated in Section E.3. Submission of Proposals, by the date and time specified in the Schedule of Key Events
- Bidder Eligibility (See RFP Section C.2. Eligible Bidders)
- Bidder must indicate that the anticipated Quitline call center will be located in the continental United States, Hawaii or Puerto Rico. (See RFP Section C.4. Location of Call Center and Section D. 1. IV. Vendor Capacity and Experience)

Evaluation Process

1. DOH will conduct a comprehensive, fair and impartial evaluation of each proposal in response

- to this solicitation.
2. At the discretion of DOH, all bids may be rejected.
 3. The evaluation of the bids will include the following considerations:
 - a. all proposals will be reviewed by DOH to determine if all mandatory requirements are met.
 - b. proposals that fail to meet the mandatory requirements will receive no further review.
 - c. the cost proposal/official bids will be forwarded to the Financial Review Team and the technical proposals will be forwarded to the Technical Review Team for scoring.

Vendor Selection

The scores from the Technical and Cost Proposal/Official Bids will be used to produce a total score based on the assigned weights for each major section. The scores will be normalized by using the following formulas:

1. The Technical Proposal will be normalized using the following formula: $X/Y*75$, where X=the average raw technical score of the proposal being scored and Y = the average raw technical score of the highest scoring Technical Proposal.
2. The Cost Proposal/Official Bid will be normalized using the following formula: $Y/X*25$, where Y= total cost of the lowest bidder and X = the total cost for the proposal being scored.

Section	Maximum Points	Percentage of Total Score
Technical Proposal	75	75%
Cost Proposal/Official Bid	25	25%
Total Combined Score	100	100%

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

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

E. ADMINISTRATIVE

1. Issuing Agency

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

2. Inquiries

Any questions concerning this solicitation must be directed by the date noted in the

Schedule of Key Events via email to:

Deborah Spinosa
tcp@health.ny.gov

Emails should cite the RFP number provided on the cover of the RFP in the subject line of the email. To the degree possible, each inquiry should cite the section and paragraph to which it refers. Written questions will be accepted until the Written Questions Due Date posted on the Schedule of Key Events.

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

3. Submission of Proposals

To submit a proposal in response to this RFP, the bidder should assemble two (2) separately sealed envelopes/packages, each containing a completed Contact Cover Sheet (Attachment 5) and:

- One (1) envelope/package should contain three (3) handwritten, signed originals and four (4) handwritten signed copies of the Technical Proposal, and this envelope should be labeled "Technical Proposal, RFP #16622."
- One (1) envelope/package should contain three (3) handwritten, signed originals and four (4) handwritten signed copies of the Cost Proposal/Official Bid, and this envelope should be labeled "Cost Proposal/Official Bid and Administrative Materials, RFP #16622."

Place each of the two (2) separately sealed envelopes/packages into a single package and clearly label it "New York State Smoker's Quitline, RFP #16622" and direct this package to:

New York State Department of Health
Bureau of Tobacco Control
ESP Corning Tower, Rm. 1055
Albany, New York 12237-0676
Attention: Deborah Spinosa

It is the bidders' responsibility to see that bids are delivered to the above address prior to the date and time of the bid due date stated in the Schedule of Key Events. Arrangements should be made at least 24 hours in advance of the due date and time to ensure persons are available to receive hand delivered bids. Contact Deborah Spinosa by email at tcp@health.ny.gov or phone at (518) 474-1515 to make arrangements.

Email proposals will not be accepted.

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

4. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

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

5. Payment

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

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

Subject: **Unit ID: 3450263 Contract #TBD**

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

**NYS Department of Health
Unit ID 345<<xxxx>>
c/o NYS OGS BSC Accounts Payable
Building 5, 5th Floor
1220 Washington Ave.
Albany, NY 12226-1900**

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

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

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

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

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

If the contract is awarded to a new vendor (not the incumbent), the contract term will be for a period of five (5) years and three (3) months. The first three (3) months will be for set up and transitioning from the current vendor to the new vendor. No payment will be made during the three (3) month transition period. Payments will begin after three (3) months when the call center is fully operational and able to accept phone calls. If the contract is awarded to the current vendor, the contract period will be for five (5) years with no transition period.

Deliverable 1: Monthly payment for the Statewide Tobacco Cessation Quitline will be made based on actual call quantity and satisfactory completion of deliverables and deadlines, as documented in required reports and as outlined in Section C. Detailed Specifications. The NYS DOH will not pay for calls that include hang-ups, dropped calls, and calls for not applicable

services.

Deliverable 2: The annual cost of the NYS Smoker's Quitsite will be paid as a monthly fee, (divided into 12 (twelve) equal increments). The monthly payment will be made based on satisfactory submission and completion of deliverables, reports and deadlines as outlined in Section C. Detailed Specifications

Deliverable 3: The annual Marketing and Outreach costs will be paid as a monthly fee, (divided into 12 (twelve) equal increments). The monthly payment will be made based on satisfactory submission and completion of deliverables, reports and deadlines as outlined in Section C. Detailed Specifications. The informational materials will be paid on a cost per packet basis based on the actual quantities.

Deliverable 4: The Nicotine Replacement Therapy Storage and Shipment Services deliverable will be paid on a monthly basis, based on actual number of NRT kits and material items stored and shipped. The monthly payment will be made based on satisfactory submission and completion of deliverables, reports and deadlines as outlined in Section C. Detailed Specifications.

Deliverable 5: Reports will be reviewed at the time of delivery by DOH staff to evaluate the quality of the contractor's performance. The annual cost of the Quality Improvement and Evaluation Deliverable will be paid monthly (divided into 12 [twelve] equal increments) based on satisfactory completion of deliverables, reports, data sets and deadlines as outlined in Section C. Detailed Specifications.

The quantities listed in this RFP are estimates only and are based upon historic numbers for one (1) year. There is no guarantee of actual quantities. The actual numbers may be higher or lower. NYS DOH payment will be based upon actual quantities only.

6. Term of Contract

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

It is anticipated that a contract resulting from this RFP will be effective on or about the anticipated start date shown in the Schedule of Key Events and the contract term will be for a period of five (5) years and three (3) months if awarded to a new vendor, to allow for a three (3) month transition period from the previous vendor to the new vendor. Should the current contract holder be awarded, the contract term will be for five (5) years.

DOH shall at all times maintain control and direction over the scope of work being performed under this agreement.

If full funding does not become available, is reduced or DOH determines that it does not need all of the services described in an approved scope of work, DOH reserves the right to request an amended scope of work from the contractor for reduced services.

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

7. Debriefing

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

8. Protest Procedures

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at:

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

9. Vendor Responsibility Questionnaire

NYS 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 NYS 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 DOH or the Office of the State Comptroller for a copy of the paper form. The winning bidder must also complete and submit the Vendor Responsibility Attestation (Attachment 3).

10. State Consultant Services Reporting

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

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

Winning bidders must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This

report must be submitted annually to the Department of Health, the Office of the State Comptroller, and Department of Civil Service.

State Consultant Services Form A

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

State Consultant Services Form B

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

11. Lobbying Statute

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

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

- k. establishes the Advisory Council on Procurement Lobbying.

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

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

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

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

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

13. Information Security Breach and Notification Act

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an

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

14. New York State Tax Law Section 5-a

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

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

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

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

ensure compliance with the law.

N.Y.S. Taxation and Finance Contractor Certification Form ST-220-TD

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

N.Y.S. Taxation and Finance Contractor Certification Form ST-220-CA

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

15. Piggybacking

New York State Finance Law section 163(10)(e) (see also

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

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

NEW YORK STATE LAW

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

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com>.

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

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

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

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

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

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

Equal Employment Opportunity Requirements

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for

employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

17. Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/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 Department of Health receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Health will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Health shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

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

18. Encouraging Use of New York Businesses in Contract Performance

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for

commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidders should complete Attachment 2 to indicate their intent to use/not use New York Businesses in the performance of this contract.

19. Diversity Practices Questionnaire

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs. All bidders should complete Diversity Practices Questionnaire, Attachment 10.

F. APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal will, itself, be referenced as an appendix of the contract.

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

- **SI-12** – Certificate of Workers’ Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers’ Compensation Group Self-Insurance.
- Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
 - **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers’ Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **DB-120.1** – Certificate of Disability Benefits Insurance
 - **DB-155** – Certificate of Disability Benefits Self-Insurance
- Appendix G - Notices
- Appendix H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)
- Appendix M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
- Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

G. ATTACHMENTS

1. New York State Department of Health Lobbying Form
2. Encouraging Use of New York Businesses in Contract Performance
3. Vendor Responsibility Attestation
4. M/WBE Procurement Forms
5. Contact Cover Sheet
6. Cost Proposal/Official Bid
7. Checklist for Proposal Submission
8. Letter of Interest
9. Attestation: Refusal of Funds from Tobacco-Related Entities
10. Diversity Practices Questionnaire
11. Sample New York State Boilerplate Contract with Appendices

Attachment 2
RFP #16622

**ENCOURAGING USE OF NEW YORK BUSINESSES
IN CONTRACT PERFORMANCE**

I. Background

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

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

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

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

II. Required Identifying Information

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

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

YES NO

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

Attachment 3
RFP #16622

VENDOR RESPONSIBILITY ATTESTATION

To comply with the Vendor Responsibility Requirements outlined in Section E, Administrative, Part 9, 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 4

M/WBE PROCUREMENT FORMS

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

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

Form #2: MWBE Utilization Waiver Request - This document should be filled out by the bidder if the utilization plan (Form #1) indicates less than the stated participation goal for the procurement. In this instance, Form #2 must accompany Form #1 with the bid. If Form #2 is provided and goal was initially set higher, revised goal approval will be necessary from DOB. When completing Form #2, it is important that the bidder thoroughly document the steps that were taken to meet the goal and provide evidence in the form of attachments to the document. The 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 nonresponsive.

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

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

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

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

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

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

Description of Plan to Meet M/WBE Goals

Click here to enter text.

PROJECTED M/WBE USAGE

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

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

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

MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION

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

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

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

WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION

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

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

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

Offeror/Contractor Name: Click here to enter text.		Federal Identification No.: Click here to enter number.	
Address: Click here to enter text.		Solicitation/Contract No.: Click here to enter number.	
City, State, Zip Code: Click here to enter text.		M/WBE Goal: MBE %%% WBE %%% (From Form #1)	
By submitting this form and the required information, the officer or/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.			
Contractor is requesting a: <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. Total Partial <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. Total Partial <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development: Click here to enter a date.			
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.mwbe@health.ny.gov		***** FOR DMWBD USE ONLY *****	
		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 *Comments: _____	

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

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

Contractor Name _____

Address _____

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

 (Name and Title)

 (Signature)

 Date

**-M/WBE Form #5 –
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

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

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

EEO

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

Name & Title

Signature & Date

Detailed Instructions for Completing MWBE Forms 1 & 2

Form#1 – MWBE Utilization Plan

Page #1 of Form #1:

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

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

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

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

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

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

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

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

Page#2 of Form#1:

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

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

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

Page#3 of Form#1:

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

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

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

Form#2 – MWBE Waiver Request

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

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

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

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

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

The following attachments should also be provided:

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

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

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

Attachment 5

RFP # 16622

CONTACT COVER SHEET

(Include in both the Technical and Cost Proposal/Official Bid Packages)

Name of Bidder <i>(Legal name as it would appear on a contract)</i>	SFS Vendor Identification Number:
	Charities Registration Number (if applicable):

Mailing Address *(Street address, P.O. Box, City, State, ZIP Code)*

Person authorized to act as the contact for this firm in matters regarding this proposal:

Printed Name <i>(First, Last)</i> :	Title:
Telephone number: ()	Fax number: ()
E-mail:	

Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:

Printed Name <i>(First, Last)</i> :	Title:
Telephone number: ()	Fax number: ()
E-mail:	

(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:

Printed Name <i>(First, Last)</i> :	Title:
-------------------------------------	--------

Signature of Bidder or Authorized Representative	Date:
---	-------

Attachment 6
COST PROPOSAL/OFFICIAL BID FORM
New York State Smokers' Quitline
RFP#16622

All costs associated with the requirements and deliverables specified in the RFP (all inclusive) must be included in the total costs per deliverable in the proposal. No additional reimbursements will be made. Refer to the RFP *Section C. Detailed Specifications* for specific details on all project deliverables.

The Cost Proposal/Official Bid Form is provided in Excel format as a separate file on the Department's Grant/Funding Opportunities webpage for RFP #16622 found at <https://www.health.ny.gov/funding/>.

The quantities listed in the bid form are only estimates and are based upon historic numbers for one (1) year. There is no guarantee of actual quantities. The actual numbers may be higher or lower. NYSDOH payment will be based upon actual quantities only.

See Detailed Specifications links for the following Deliverables:

[Deliverable 1:](#)

[Deliverable 2:](#)

[Deliverable 3:](#)

[Deliverable 4:](#)

[Deliverable 5:](#)

Attachment 7
CHECKLIST FOR PROPOSAL SUBMISSION
New York State Smoker's Quitline
RFP# 16622

Bidder Name: _____

- The Technical Proposal and the Cost Proposal/Official Bid and Administrative Materials are packaged in separate, sealed marked envelopes as specified in RFP Section E.3. Submission of Proposals.
- Three (3) signed originals plus four (4) additional copies of the Technical and Cost/Official Bid proposals are enclosed.
- Attestation: Refusal of Funds from Tobacco-Related Entities (Attachment 9).
- Complete, signed contact cover sheet (Attachment 5) with specified information is included in each envelope/package
- NYS Department of Health Lobbying Form (Attachment 1)
- Encouraging Use of NY Businesses in Contract Performance (Attachment 2)
- Vendor Responsibility Attestation (Attachment 3)
- MWBE Forms (Attachment 4)
- Diversity Practices Questionnaire (Attachment 10)

Attachment 8
Letter of Interest (optional)

Deborah Spinosa
NYS Bureau of Tobacco Control
Room 1055, Corning Tower Building
Empire State Plaza
Albany NY 12237

Re: RFP # 16622
RFP Title: NYS Smokers Quitline

Dear Ms. Spinosa:

This letter is to indicate our interest in the above Request for Proposals (RFP) and to request: (please check one)

that our organization be notified, via the email address below, when any updates, official responses to questions, or amendments to the RFP are posted on the Department of Health website:
<http://www.health.ny.gov/funding/>.

Email address: _____

that our organization is unable or prefers not to use the Department of Health's website and requests the actual documents containing any updates, official responses to questions, or amendments to the RFP be mailed to the address below:

Sincerely,

Print/Type Name: _____

Title: _____

Bidder Organization: _____

Date: _____

Attachment 9

RFP #16622

ATTESTATION: REFUSAL OF FUNDS FROM TOBACCO-RELATED ENTITIES

The bidder understands and agrees that if it becomes a vendor of the Department of Health, the bidder and all persons within the organizational unit it represents shall not accept any grant or anything else of value from, or otherwise be affiliated with¹, any tobacco manufacturer, distributor, or other tobacco-related entity.²

The bidder understands and agrees that this attestation, when signed, serves as the bidder's written policy regarding its tobacco-free status as defined herein.

The bidder understands and agrees to ensure that any agreement with subcontractors or consultants whose work is instrumental to achieving the goals and objectives of the contract shall execute a copy of this attestation.

Title: _____

Signature: _____ Date: _____
(Signed by "Person authorized to obligate" on Cover Sheet, Attachment 5)

¹ *Affiliation* includes, but is not limited to:

- being employed by, or a contractor of, any tobacco company, association or any other agent known to advance the interests of a tobacco company or association; or
- owning a patent or proprietary interest in a technology or process related to the consumption of tobacco or other tobacco use-related products.

² *Tobacco manufacturer, distributor, or other tobacco-related entity* includes, but is not limited to, any person, corporation or entity, including any repacker or relabeler, that manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution in New York State.

Attachment 9- continued

ATTESTATION: REFUSAL OF FUNDS FROM TOBACCO-RELATED ENTITIES

Questions and Answers

Q. *What is the purpose of the Refusal of Funds from Tobacco-related Entities (RFTE) requirement?*

A. The RFTE requirement helps to assure that there are no conflicts of interest, potential conflicts of interest or perceived conflicts of interest between the DOH, its contractor's and tobacco-related entities. It assures that contractors do not rely on funding from sources that could dilute, or call into question, their commitment to tobacco control.

Q. *Does the RFTE requirement apply only during the life of the contract or does it extend more broadly?*

A. The RFTE requirement prohibits contractors from having any ongoing contractual relationships or any other affiliations with a tobacco manufacturer, its affiliates or its subsidiaries when the contractor signs the contract or from entering into such a relationship during the life of the contract. It does not bar grants to entities which have had past contractual relationships or any other affiliations with tobacco companies, nor does it prohibit contractors from entering into relationships with tobacco companies after the completion of the contract.

Q. *The RFTE requirement states that bidders may not accept any grant or anything else of value. In this context, what does "value" mean?*

A. Value means anything having or being perceived as having monetary value. This includes, but is not limited to, a salary, fee, goods, services, gifts, benefits, discounts, loans, advances, forbearances, travel, lodging, or any other thing paid, owed, given or promised. It also includes items which may be of a nominal value, including but not limited to refreshments, promotional items or ceremonial items (e.g., awards or plaques).

Q. *Does the RFTE requirement apply to the institutional recipient, the individuals working on the contract, or both?*

A. The RFTE requirement applies to both the institutional recipient and all individuals working on the contract.

Q. *How does the RFTE requirement apply to complex institutions, for example, universities or state or local governments? Is the entire university or state or local government bound by the RFTE requirement when one part of it accepts a DOH contract that includes the RFTE requirement in the funding announcement?*

A. No. DOH understands that it would be unduly burdensome for a university or state or local government to enforce this throughout the entire institution or state. For that reason, DOH only requires that the organizational unit receiving the contract comply with the RFTE requirement.

Q. *What does that mean in the context of an educational institution or other large institution such as a hospital? What is the "organizational unit receiving the contract"?*

A. In the case of an educational institution, the RFTE requirement applies to all programs of the School for which the contract project coordinator and/or principal investigator carries out the contract duties. It does not apply to other Schools or other components of the university. For example, if the contract project coordinator and principal investigator are carrying out the contract duties for a university's School of Public Health or for a department of the School of Public Health, the entire School of Public Health, including all of its departments and any other sub-units, must comply with the RFTE requirement. Schools, departments, or other units located outside of the School of Public Health would not be similarly bound.

Similarly, in the case of a hospital, the RFTE requirement applies to the organizational unit for which the contract project coordinator and/or principal investigator are carrying out the contract duties. It does not apply to other organizational units within the hospital. For example, if the contract project coordinator and principal investigator are carrying out the contract duties in the community health unit of a hospital, the entire unit, including all of its departments and any other sub-units, must comply with the RFTE requirement. Other parts of the hospital would not be similarly bound.

Q. What about a local government such as a local health department?

A. The same principles apply. The department or agency within which the Contract Project Coordinator and/or Principal Investigator are carrying out the contract activities would be bound by the RFTE requirement. Other departments, agencies, etc. would not be.

Q. Do the RFTE requirement restrictions apply to sub-contractors or anyone else to whom the contractor disburses DOH funds?

A. The RFTE requirement of the contract applies to any sub-contractors that are instrumental to achieving the goals and objectives of the contract. For example, if a contractor subcontracts a scope of work to an entity to work on developing a media campaign to educate residents about the dangers of secondhand smoke in multi-unit housing buildings, or if a contractor sub-contracts with a consultant to do work with a health system to ensure tobacco screening policies, those sub-contracts/consultants are subject to the same requirements. If a contractor subcontracts with an entity to process payroll, conduct audits or rent space for a coalition meeting, those businesses are not subject to the RFTE requirement.

Q. Is a contractor required to divest itself of tobacco-related stock or other financial holdings?

A. No. The RFTE requirement does not contain divestiture provisions.

Q. How will a contractor know the identity of tobacco manufacturers, distributors or other tobacco-related entities?

A. DOH recognizes that identifying tobacco manufacturers, distributors and other tobacco-related entities can be challenging given the complex nature of conglomerates. Contractors are encouraged to review publically-available information regarding tobacco companies.

Q. Are there any exceptions to the RFTE requirement?

A. DOH will consider, on a case-by-case basis, requests for a temporary waiver to permit a contractor to come into compliance with the RFTE requirement. Those requests should be submitted as a question during the procurement's open Q&A time.

Q. Isn't DOH concerned that potential contractors that could make a real contribution to tobacco control may be disqualified by this RFTE requirement?

A. DOH has made a substantial effort to assure that the RFTE required obligations are realistic, do not unduly burden institutions and do not interfere with humanitarian work. However, it is DOH's carefully considered view that it would be inconsistent with our mission and lead to conflicts of interest, if we were to fund institutions or, as described above, components of institutions that accept tobacco-industry funding. We encourage institutions to review their own fundraising criteria and programs and consider the concerns we have put forward.

Q. What is the penalty if a contractor is not compliant with the RFTE requirement?

A. Depending on the nature of the noncompliance, the Department reserves the right to terminate the contract.

Attachment 10

DIVERSITY PRACTICES QUESTIONNAIRE

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

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

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

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

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

4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

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

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

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

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

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

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

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

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

Do not include onsite project overhead.

Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Attachment 11
SAMPLE NEW YORK STATE BOILERPLATE CONTRACT WITH APPENDICES
MISCELLANEOUS / CONSULTANT SERVICES

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

NYS COMPTROLLER'S NUMBER: C#XXXX

ORIGINATING AGENCY GLBU: DOH01
DEPARTMENT ID: 345XXXX

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:
TO:

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

FUNDING AMOUNT FOR CONTRACT
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

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

NYS VENDOR IDENTIFICATION NUMBER:

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

MUNICIPALITY NO. (if applicable)

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

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

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

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

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

GLBU: DOH01
Appendix X

Contract Number: _____

Contractor: _____

Amendment Number X-_____

BSC Unit ID: 345<XXXX>

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

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

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

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

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

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

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

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

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

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.

This will result in new contract terms of:

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

Signature Page for:

Contract Number: _____

Contractor: _____

Amendment Number: X-_____

BSC Unit ID: 345<XXXX>

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

CONTRACTOR SIGNATURE:

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

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

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

(Signature and office of the individual taking acknowledgement)

STATE AGENCY SIGNATURE

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

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

ATTORNEY GENERAL'S SIGNATURE

By: _____ Date: _____

STATE COMPTROLLER'S SIGNATURE

By: _____ Date: _____

Appendix A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

STATE OF NEW YORK
AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

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

II. Payment and Reporting

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

- 1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: accountspayable@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>>
c/o NYS OGS BSC Accounts Payable
Building 5, 5th Floor
1220 Washington Ave.
Albany, NY 12226-1900

- 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, by email at epayments@osc.state.ny.us or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

III. Term of Contract

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

this agreement shall be deemed terminated and canceled.

IV. Proof of Coverage

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

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

V. Indemnification

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

**APPENDIX D
GENERAL SPECIFICATIONS**

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

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

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

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

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

N. Date/Time Warranty

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

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

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

2. Date/Time Warranty Statement

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

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

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

- O. No Subcontracting Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- P. Superintendence by Contractor The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.
- Q. Sufficiency of Personnel and Equipment If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

- R. Experience Requirements The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.
- S. Contract Amendments. This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

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

T. Provisions Upon Default

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

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

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

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

W. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:

- a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
- b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

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

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

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

Instructions for Certification

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

remedies, including suspension and/or debarment.

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

Y. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity

with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.

2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

Z. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; and
 - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and
 - c. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.

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

BB. Provisions Related to New York State Information Security Breach and Notification Act CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General

Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

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

DD. On-Going Responsibility

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

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

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract.

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

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

Appendix H

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

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

- II. Obligations and Activities of Business Associate:
 - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
 - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
 - C. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
 - 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - 4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
 - 5. Contact procedures for Covered Program to ask questions or learn additional information.
 - D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
 - E. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.

- F. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
- G. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
- H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
- I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.

III. Permitted Uses and Disclosures by Business Associate

- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
- B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
- C. Business Associate may disclose Protected Health Information as Required By Law.

IV. Term and Termination

- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.
- B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.
- C. Effect of Termination.
 - 1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program.

This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

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

V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

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

Appendix G

NOTICES

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

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

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:

Email Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

Email Address:

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

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

Appendix M

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

I. General Provisions

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

II. Contract Goals

- A. For purposes of this contract, the New York State Department of Health hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
<https://ny.newnycontracts.com/>

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

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and

intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Department of Health for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
 - 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 - 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "D" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Form #4 - Staffing Plan

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

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

IV. MWBE Utilization Plan

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

V. Waivers

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

VI. Quarterly MWBE Contractor Compliance Report

- A. Contractor is required to submit a Quarterly MWBE 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 MWBE goals of the Contract. Data should be submitted via the online compliance system at <https://ny.newnycontracts.com>.

VII. Liquidated Damages - MWBE Participation

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.