



INVITATION FOR BID

ENTITLED:

**“MEDICAL EXAMINATION
and
MOBILE AUDIOMETRIC SERVICES”**

RELEASE DATE:

June 15, 2023

BID SUBMISSION DUE DATE:

July 13, 2023

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until State Comptroller approval of the resultant Contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the Designated Contact as listed in Section 2 of this Invitation for Bids (IFB) and shall be in compliance with the Procurement Lobbying Law and the NYS Department of Civil Service “*Rules Governing Conduct of Competitive Procurement Process*” (refer to IFB, Section 2: Procurement Protocol and Process).

**All inquiries, questions, filings and Submissions for
this Solicitation must be directed in writing to:**

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New York State Department of Civil Service
Attn: Office of Financial Administration, Floor 17
Agency Building 1, Empire State Plaza
Albany, New York 12239
DCSprocurement@cs.ny.gov

Timothy R.
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Commissioner
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Michael Ryan
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Employee Health Services

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SECTION 1: INTRODUCTION

1.1 Purpose

The New York State Department of Civil Service (Department or DCS) has issued this Invitation for Bid (IFB) entitled “**Medical Examination and Mobile Audiometric Services**” (**MEMAS**) to secure the services of multiple qualified organizations, either directly or through subcontracts with qualified organizations, to perform the entire scope of medical and/or psychological consultation and examination services and/or mobile audiometric services as described in Section 3 of the IFB. The contracts will be awarded by lot and region to multiple qualified vendors.

This IFB defines minimum contract requirements, details response requirements, and outlines the Department’s process for selecting an Offeror. Project Services are set forth in detail in Section 3 of this IFB. Capitalized terms used herein shall have the meanings specified in the Glossary of Defined Terms (Attachment 23) or the body of this IFB.

This IFB and other relevant information may be reviewed at: <https://www.cs.ny.gov/2023MEMASIFB/>

1.2 Period of Performance

The term of the Contract(s) resulting from this IFB shall commence on January 1, 2024 (Effective Date), and continue for a period of four years until December 31, 2027 subject to the approval of the Office of the State Comptroller unless otherwise terminated in accordance with the resulting Contract provisions.

The State may, solely at the State’s option, extend the resulting Contract for one two-year period at the contract rates.

In accordance with New York State policy and New York State Finance Law section 112(2), the resulting Contract(s) is deemed executory until it has been approved by the New York State Attorney General’s Office (AG) and approved and filed by the New York State Office of the State Comptroller (OSC).

1.3 Overview of the Employee Health Service Division

The Employee Health Service (“EHS”) Division of the Department of Civil Service (“DCS”) or (“Department”) provides to all New York State (“NYS”) departments and agencies medical and/or psychological examination services mandated or authorized by Civil Service Law. Occupational health examination, screening, and immunization services are also provided by EHS professionals. A full-time staff of physicians, nurse practitioners, registered nurses, and medical technicians conduct medical examinations and diagnostic testing in Cohoes. In addition, EHS operates part-time medical examination centers in Hauppauge, Brooklyn, Syracuse and Buffalo. Nursing stations providing workplace nursing services are currently operated at locations

throughout the State. In addition, EHS contracts with other medical providers for services which are not the subject of this IFB.

EHS authority is derived from Article V, Section 6 of the NYS Constitution. More specifically, the following authorizations are specified in New York Civil Service Law:

Section 50	Competitive examinations
Section 55-b	Employment of the disabled
Section 55-c	Employment of disabled veterans
Section 71	Return to work from workers' compensation leave
Section 72	Involuntary leave for medical and mental disability
Section 73	Return to work from ordinary disability leave

1.4 Overview of Medical Examination and Mobile Audiometric Services

The Department seeks to contract with solo practitioners, medical group practices, and/or health care organizations for the provision of the following services on a per Lot per Geographic Region basis. Contracts will be awarded to all responsible and responsive entities that meet the qualifications.

Lot #1: Occupational Health and Preplacement Examinations

1. Occupational Health Examinations are conducted to determine whether an employee has developed an occupationally related illness.
2. Preplacement physical examinations are conducted for candidates who are being considered for appointment to a specific job for which there are predetermined medical and physical standards.
3. Note: Please see Attachment 16 for detailed information regarding the Mandatory and Optional services under Lot #1

Lot #2: Fitness-For-Duty / Agency Referral Examinations

1. These examinations are conducted to provide State agencies with information to determine an individual's medical capability to perform the

essential duties of a particular State job title with or without reasonable accommodations.

2. Note: Please see Attachment 17 for detailed information regarding the Mandatory and Optional services under Lot #2

Lot #3 – Mobile Audiometric Services

1. Mobile audiometric services are conducted per Federal and State regulations to maintain hearing conservation programs for at-risk employees.

1.5 Work Load Estimates

Listed below are estimates of the number and types of medical examinations to be ordered by EHS per year in the designated regions by lots around the State. This list is provided for informational purposes only and should not be considered a representation, warranty, or guarantee of the level of services that may result during the term of the resulting contracts. In addition, for Lots 1 and 2 the estimates represent the occupational health and preplacement examinations and Fitness-For Duty/Agency referral Examination respectively and do not include additional tests that may be ordered as part of that examination. Lastly, EHS, at its option, may use internal resources to complete certain examinations and testing depending on availability.

Geographic Region	Counties	Lot #1: Occupational Health and Preplacement Examinations	Lot # 2 Fitness-For-Duty / Agency Referral Examinations	Lot #3: Mobile Audiometric Service/Test Days <i>*See Note Below</i>
Region 1 Western New York	Allegany Cattaraugus Chautauqua Erie Genesee Livingston Monroe Niagara Ontario Orleans Seneca Wayne Wyoming Yates	750	175	25
Region 2 Southern Tier	Broome Chemung Chenango Delaware Schuyler Steuben Tioga Tompkins	375	35	15
Region 3 Central New York	Cayuga Cortland Fulton Herkimer Madison Montgomery Oneida Onondaga Oswego Otsego Schoharie	325	130	30

Geographic Region	Counties	Lot #1: Occupational Health and Preplacement Examinations	Lot #2: Fitness-For-Duty / Agency Referral Examinations	Lot #3: Mobile Audiometric Service/Test Days <i>*See Note Below</i>
Region 4 Capital Region	Albany Columbia Greene Rensselaer Saratoga Schenectady Warren Washington	300	20	30
Region 5 Hudson Valley	Dutchess Orange Putnam Rockland Sullivan Ulster Westchester	350	10	10
Region 6 New York City	Bronx Kings New York Queens Richmond	900	25	5
Region 7 Long Island	Nassau Suffolk	15	5	5
Region 8 North Country	Clinton Essex Franklin Hamilton Jefferson Lewis St. Lawrence	75	5	15

***Each “Test Day” represents approximately 100 hearing tests performed per 8-hour day.**

1.6 Offeror Eligibility

The Department requests Bid submissions only from qualified Offerors, as specified below. For the purpose of this IFB, an Offeror is understood to mean solo practitioners, medical group practices, or health care organizations.

1. The Offeror must, at time of Bid submission and throughout the term of the Contract, possess the legal capacity to enter into a Contract with the Department.
2. The Offeror, at time of Bid submission and throughout the term of the Contract, must be authorized to conduct business in New York State, or, if the Offeror is not so authorized at time of Bid submission Due Date (as specified in Section 1.6 of this IFB), then the Offeror must, at the time of Bid submission Due Date, have filed an application for authority to do business in New York State with the New York State Secretary of State. Such application must be approved prior to Contract Award. (For details concerning this requirement, refer to: <https://dos.ny.gov/form-corporation-or-business>. To register with the Secretary of State, contact: <https://www.dos.ny.gov/corps/index.html>). The Offeror shall notify the Department immediately in the event that there is any change in the above corporate status.
3. The Offeror must represent and warrant that, at time of Bid submission, it has completed, obtained, or performed all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority for the provision of the delivery of Project Services (as detailed in Section 3 of this IFB) and agree that it will, during the term of the Contract, comply with any requirements imposed upon it by law or regulation.
4. In addition to the Confidentiality provisions in Standard Clauses for All Department Contracts (Appendix B), the Offeror must agree and acknowledge that:
 - All claims, enrollment, and other data (i.e., materials) provided by the Department or the Department's agents and/or Contractors is being provided to the Offeror ("Contractor") solely for the purpose of allowing the Contractor to fulfill its duties and responsibilities under the Contract;
 - Said materials are and remain the sole property of NYS; and
 - The Offeror represents and warrants that it will not share, sell, release, or make the data available to third parties in any manner without the written consent of the Department, except as directed by a court of competent jurisdiction, or as necessary to comply with applicable NYS or federal law.
5. The Offeror must represent and warrant that, at time of Bid submission, it has maintained an organization for the past three years capable of delivering the Project Services.
6. The Offeror's medical staff assigned to perform project services, including all physicians, psychologists, audiologists, physician's assistants and nurse practitioners, must be licensed in NYS. Physicians providing occupational health services must be Board eligible or certified in occupational medicine, internal medicine, emergency medicine or family practice. All subspecialty physicians must be Board eligible or certified in that specialty.

7. An Offeror proposing to provide mobile audiometric services (Lot #3) must be capable of providing services as required by the OSHA standard for, at a minimum, one hundred (100) persons in an eight (8) hour period, hereinafter, referred to as a "Test Day".
8. The Offeror agrees to use Attachments 5 – 11 as official forms to be submitted to the Department. The Department reserves the right to edit, add, delete or modify forms that are required to be submitted.

1.7 Timeline of Key Events

EVENT	DATE
IFB Release Date	Thursday, June 15, 2023
Deadline for Submission of Offeror Questions	Thursday June 22, 2023
Release Date of Official Responses to Offeror Questions	Thursday, June 29, 2023
Submission Due Date and Time	Thursday July 13, 2023
Anticipated Tentative Contract Award	Friday, July 21, 2023
Anticipated Contract Start Date	Monday, January 1, 2024

SECTION 2: PROCUREMENT PROTOCOL AND PROCESS

2.1 Rules Governing Conduct of Competitive Procurement Process

All inquiries, questions, filings, and submission of Bids in regard to the IFB must be directed in writing to the contact information listed below. Submission of Bids may not be submitted by e-mail or facsimile. Any inquiries, questions, filings or Submissions to any other contact or physical address shall not be considered as official, binding or as having been received by the Department.

1. Designated Contact

In accordance with New York State Finance Law § 139-j(2)(a) (Procurement Lobbying Law (PLL), the following individual is the Designated Contact for this Solicitation. All questions relating to this Solicitation must be addressed to the following Designated Contact.

Dyane McGee
New York State Department of Civil Service
Attn: Office of Financial Administration, Floor 17
Agency Building 1, Empire State Plaza
Albany, New York 12239
DCSprocurement@cs.ny.gov

2. Restrictions on Contacts Between Offerors and State Staff During the Procurement Process

- a. Pursuant to New York State Finance Law sections 139-j and 139-k, this Procurement imposes certain restrictions on communications between the Department and an Offeror during the procurement process. An Offeror is restricted from making contacts unless the contact falls within certain statutory exceptions (“permissible contacts”) set forth in State Finance Law §139-j(3)(a), from the earliest posting, on the Department’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article 4-C of the Economic Development Law, of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerors intending to result in a contract with the Department through final award and approval of the contract by the Department and, if applicable, the Office of the State Comptroller). This time period is defined as the Restricted Period. The Designated Contact for this procurement is set forth in section 2.1.1 of this IFB. Staff is required to obtain certain information from an Offeror whenever contacted about the procurement during the restricted period and is required to make a determination of the Offeror’s responsibility that addresses the Offeror’s compliance with the statutory requirements. Certain

findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offeror is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <https://www.ogs.ny.gov/ACPL/>.

- b. The Department strictly controls communications between any Offeror and participants in the procurement process. "Offeror" means the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, who contacts the Department about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicate with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document.

3. Submission of Errors or Omissions in this IFB Document

If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in this IFB, the Offeror shall immediately notify the Department's Designated Contact via the email address listed in Section 2.1.1 of the IFB of such error or omission and request clarification or modification of the document.

If, prior to the Deadline for Submission of Bids, an Offeror fails to notify the Department of a known error or omission or an error or omission that reasonably should have been known, the Offeror shall assume the risk of bidding. If awarded the Contract, the Offeror shall not be entitled to additional compensation by reason of the error or omission or its correction.

The Department reserves the right to determine and act in the best interests of the State in resolving any assertion of error or omission in this IFB document.

4. Submission of Questions

Using the *Questions Template* (Attachment 3), a prospective Offeror may submit questions concerning the content of this IFB via email to the Designated Contact's address specified in Section 2 of this IFB. Only those questions received prior to the Questions Due Date specified in Section 1 of this IFB, will be accepted. After the Questions Due Date, the Department will provide an email notification of the posting of all questions and the Department's official answers to all those individuals who provided an email address on the submitted *Offeror's Certification Form* (Attachment 1), and the *Questions Template* (Attachment 3). The questions

and answers will also be posted to <https://www.cs.ny.gov/2023MEMASIFB/>

5. Submission of Bids

Each Offeror must submit its Bid submission in the method outlined below:

Bid Submission Requirements: USB Flash Drive

The Offeror must submit **two** USB flash drives.

- One USB flash drive will be your Bid submission and should be saved on the USB drive as Adobe, searchable, files. **(Please see exception below)** The files must be representative copies of the original documents, including signatures.
- The second USB must meet the needs found in section 2.2.1.b Disclosure of Bid Contents- FOIL.
- **Attachment 16, Attachment 17 and Attachment 18 must be completed using the provided Excel file and must be saved to the USB in an Excel format. Each Lot will have an individual tab for each Region. The Offeror must complete the respective tab for each region they are submitting a bid for.**

Note: Any bid submission that deviates from these bid submission requirements will be deemed non-responsive. Submission of other types of data storage devices will not be accepted.

Clearly mark the envelope and your USB flash drive as “MEMAS [Offeror’s Name].”

The Offeror must retain the original bid documents in its records. If the Offeror is selected for award, the Offeror must submit wet ink signed documents to The Department prior to contract execution.

It is the Offeror’s responsibility to ensure that the USB flash drive is free from any and all malicious software and that the files are accessible and uncorrupted. The Offeror should scan the USB flash drive before submission to ensure there is no malicious software (i.e., malware) on the drive and that all files are accessible and uncorrupted. The Department will perform a security scan on the USB flash drive before accessing the stored files. If the security scan identifies malicious software, or the files are inaccessible or corrupted, the Department may reject the submission and disqualify the Offeror from further consideration.

Note: Documents requiring signature should be signed with an ink pen (i.e., wet signature). Bids submitted with e- signatures or scanned signatures may be accepted by the Department, at the Department's discretion, subject to the requirements set forth herein. ³

**New York State Department of Civil Service
Invitation for Bid
"MEDICAL EXAMINATION
and
MOBILE AUDIOMETRIC SERVICES"
OFFEROR NAME
OFFEROR ADDRESS**

- a. All Submissions must be mailed or hand-delivered to the address provided in Section 2.1.1 of this IFB. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact twenty-four hours prior to delivery. **All Submissions must be received by 12:00 (Noon) p.m. ET on the Submission Due Date as set forth in Section 1.7 of the IFB.**
- b. Any submissions received after **12:00 p.m. (Noon) ET** on the Submission Due Date, as specified in Section 1.7, may not be accepted by the Department and may be returned to the submitting entity at the Department's discretion. All Submissions submitted become the property of the Department.
- c. The Department will accept amendments and/or additions to an Offeror's Submission if the amendment and/or addition is received by the Submission Due Date. All amendments to an Offeror's Submission must be submitted in accordance with the format set forth in Section 2.1.5 of this IFB and will be included as part of the Offeror's Submission.
- d. An Offeror is solely responsible for timely delivery of the Submission to the Department prior to the Submission Due Date stated in Section 1.7 of this IFB. Delays in United States mail deliveries or any other carrier, including couriers or agents of New York State, shall not excuse late bid submissions. If the Submission is delivered by mail or courier, the Department recommends that it be sent "Returned Receipt Requested", so the Offeror obtains proof of timely delivery. No phone, facsimile or e-mail Submissions will be accepted for this IFB. In addition, it is the sole responsibility of the Offeror to verify that all elements of the Submission are complete, correct and without error.

³ The Department retains the right to require submission of documentation verifying the identity of the signer and his or her intent to sign on behalf of the Offeror, and will require submission of wet ink signatures upon notice of award. Failure to provide appropriately signed original documents after notice of award may result in disqualification.

6. Bid Deviations

- a. The Department will not entertain bid deviations to *Standard Clauses for New York State Contracts* (Appendix A). The Department will also not entertain material and substantive bid deviations to the solicitation to *Standard Clauses for All Department Contracts* (Appendix B), *Information Security Requirements* (Appendix C) *MWBE/EEO/SDVOB Requirements* (Appendix D) and the *Insurance Requirements* (Appendix E). NYS law precludes awarding a contract based on material deviation(s) from the specifications, terms, and/or conditions set forth in the solicitation. Therefore, Submissions containing a bid deviation (including additional, inconsistent, conflicting or alternative terms) that are a material and substantive change from the specifications, terms, and conditions set forth in the solicitation may render the Submission non-responsive and may result in rejection of the submission.
- b. If Offeror has an issue or concern regarding provisions in the solicitation and is considering a submission containing a bid deviation, Offeror is strongly advised to raise such issues and/or concerns during the question and answer period so that the Department may give due consideration to the issue prior to submission. Failure to use the question and answer period and instead submitting a bid deviation could render the entire Submission non-responsive and rejected in its entirety.
- c. In general, a material and substantive bid deviation is one that would (i) impair the interests of New York State, (ii) place the successful Offeror in a position of unfair economic advantage, (iii) place other Offerors at a competitive disadvantage, or (iv) which, if it had been included in the original solicitation, could have formed a reasonable basis for an otherwise qualified Offeror to change its determination concerning the Submission. For example, a deviation that would substantially shift liability (risk) or financial responsibility from the Offeror to New York State would be considered material.
- d. Unless specifically required by the solicitation to be submitted as part of an Offeror's submission, an Offeror is further advised that its standard, pre-printed material (including but not limited to product literature, order forms, manufacturer's license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Offeror's Submission are not considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Submission. Rather, such material shall be deemed by the Department to have been included by Offeror for informational or promotional purposes only. If such materials are requested by the solicitation, an Offeror must ensure that the materials are properly referenced.

- e. To submit a non-material bid deviation, an Offeror must complete and submit the proposed deviation(s) using the *Non-Material Deviations Template* (Attachment 4), as part of the Bid Submission. If a non-material bid deviation does not meet these requirements, it shall not be considered by the State and shall be rejected.
- f. An Offeror who does not submit the *Non-Material Deviations Template* (Attachment 4), as part of the Bid Submission is presumed to have no bid deviations.

7. Notification of Tentative Contract Award

Tentative award letter(s) will be sent to the selected Offeror(s) indicating a tentative award subject to successful contract negotiations. Any Offerors not selected for tentative award will be notified of non-selection. No public discussion or news releases relating to the IFB, the associated procurement process, including but not limited to the bid solicitation, proposal evaluation and award, and contract negotiation processes or the Agreement are to be made by any Offeror or their agent without the prior approval of the Department. At the time of the notification of award, Offerors will also be advised of the opportunity to request a debriefing.

8. Debriefing

In accordance with NYS State Finance Law §163(9)(c), the Department shall upon written request provide a debriefing to any Bidder that responded to the IFB regarding the reason that the bid submitted by the unsuccessful Offeror was not selected for a contract award. A Debriefing must be requested in writing by the entity within fifteen (15) business days of the Department's notifying of Bidder Selection/Non-Selection. A Bidder's written request for a Debriefing shall be submitted to the designated contact indicated in Section 2. The Debriefing shall occur within ten (10) days of the Department's receipt of this request or as soon after that time as practicable under the circumstances. All Offeror's requesting a Debriefing will be accorded fair and equal treatment with respect to its opportunity for Debriefing.

9. Submission of a Protest

A Bidder wishing to challenge the selection of a firm for contract award must send a Notice of Protest on business letterhead, within seven (7) business days of notice of a contract being awarded, to the Designated Contact in Section 2 of this IFB. If a request for a Debriefing is received by the Department as set forth in this IFB, then a Notice of Protest is due within two business days after the Debriefing session occurs.

The Notice of Protest must include at a minimum the following information: (a) IFB number if applicable and IFB title, (b) the specific factual and/or legal allegations

setting forth the basis on which the protesting party challenges the contract award, and (c) a contact name, address, and e-mail address to which the Department may address its Protest Determination.

The Department will review the Notice of Protest, and within fifteen (15) business days notify the protesting party of its Protest Determination. If the Department requires additional time, then it will notify the protesting party within the above stated fifteen (15) business days. The Department may summarily deny a protest that fails to contain specific factual or legal allegations. Upon receipt of the Department's Protest Determination, the protesting party may file an appeal with the Office of the State Comptroller (OSC). The process for filing such an appeal is set forth at: <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/17.htm>

10. Department of Civil Service Reservation of Rights

In addition to any rights articulated elsewhere in this IFB, the Department reserves the right to:

- a. Make or not make an award under the IFB, either in whole or in part;
- b. Prior to the bid opening, amend the IFB. If the Department elects to amend any part of this IFB, such amendments will also be posted to: <https://www.cs.ny.gov/2023MEMASIFB/>
- c. Prior to the bid opening, direct Offerors to submit Bid modifications addressing subsequent IFB amendments;
- d. Withdraw this IFB, at any time, in whole or in part, prior to OSC approval of award of the contract;
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Submission fails to conform to any of the mandatory requirements of this IFB;
- g. Require clarification at any time during the Procurement process and/or require correction of apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Submission and/or to determine an Offeror's compliance with the requirements of this IFB;
- h. Reject any or all Submissions received in response to this IFB;
- i. Change any of the scheduled dates stated in this IFB notice of any such changes will be provided to all organizations who provided an email address on the submitted *Offeror's Certification Form* (Attachment 1). Notice of any changes will also be posted to <https://www.cs.ny.gov/2023MEMASIFB/>
- j. Seek clarifications and revisions of Submissions;

- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Offerors;
- m. For the purposes of ensuring completeness and comparability of the Bids, analyze submissions and make adjustments or normalize submissions in the Bid(s), including the Offeror's technical assumptions, and underlying calculations and assumptions used to support the Offeror's computation of costs, or to apply such other methods it deems necessary to make level comparisons across Bids;
- n. Use the Bid information obtained through any site visits, and the Department's own investigation of an Offeror's qualifications, experience, ability or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information, if any, in the course of evaluation and selection under this IFB;
- o. Negotiate with the successful Offeror within the scope of this IFB in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Bid(s) received except to the extent such information/ideas are protected under the New York State Freedom of Information Law, Article 6 of the Public Officers Law as critical infrastructure information or trade secrets;
- q. If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing a contract. Prior to negotiating with the Offeror with the next highest Total Combined Score, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Scores will not be recalculated for any remaining Offerors should contract negotiations between the Department and the selected Offeror be unsuccessful because of material differences in key provision(s);
- r. Unless otherwise specified in this IFB, every offer is firm and not revocable for a minimum period of one hundred and eighty days from the Submission Due Date as set forth in the IFB; and
- s. Any Offeror whose Submission might become eligible for a tentative award

may be asked to extend the time for which its Submission shall remain valid if the original award is withdrawn.

11. Disclaimer

- a. The Department is not liable for any cost incurred by any Offeror prior to approval of the contract by OSC. Additionally, no cost will be incurred by the Department for any prospective Offeror or Offeror's participation in any Procurement-related activities; and the Department shall not be liable for any costs incurred prior to the Implementation Period performing activities set forth in Section 3 of this IFB.
- b. The Department has taken care in preparing the data accompanying this IFB (hard copy attachments, website attachments, and sample document attachments). However, the Department does not warrant the accuracy of the data. The numbers or statistics which appear in hard copy attachments, website attachments, and sample document attachments referenced throughout this IFB are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation. Accordingly, prospective Offerors should rely upon and use such numbers or statistics in preparing their Bid at their own discretion.

2.2 Compliance with Applicable Laws, Rules and Regulations, and Executive Orders

This Procurement is subject to the New York State competitive bidding laws and also governed by, at a minimum, the legal authorities referenced below. An Offeror must fully comply with the provisions set forth in this section of the IFB, as well as the provisions of the Standard Clauses for New York State Contracts (Appendix A) and the Standard Clauses for all DCS Contracts (Appendix B), which will become a part of the resulting contract. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provisions and whose Bid contains the submission required hereunder. An Offeror must fully comply with the provisions set forth in the Attachments as well as the Appendices which will become a part of the resulting contract

1. Disclosure of Bid Contents – Freedom of Information Law (FOIL)

- a. NOTICE TO OFFEROR AND ITS LEGAL COUNSEL

All materials submitted by an Offeror in response to this IFB shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Submissions may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. The Department has the right to

adopt, modify, or reject any or all ideas presented in any material submitted in response to this IFB.

The Department shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this solicitation that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Offeror upon submission. To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding FOIL. If an Offeror believes that any information in its submission or supplemental submission(s) constitutes proprietary and/or trade secret or critical infrastructure information and desires that such information not be disclosed pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing a *Freedom of Information Law (FOIL) Request for Redaction Chart* (Attachment 20). The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of *Freedom of Information Law (FOIL) Request for Redaction Chart* (Attachment 20) contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, or summary assertions that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed *Freedom of Information Law (FOIL) Request for Redaction Chart* (Attachment 20) must be submitted to the Department at the time of its submission; it should be included with the Requested Redactions (USB storage drive and Hard Copy) described below. If the Offeror chooses not to assert that any submission material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should so advise the Department by checking the applicable box on *Freedom of Information Law (FOIL) Request for Redaction Chart* (Attachment 20) and submitting it to the Department at the time of its Submission, but separately from its Submission. If a completed *Freedom of Information Law (FOIL) Request for Redaction Chart* (Attachment 20) form is not submitted, the Department will assume that the Offeror chooses not to assert that any Bid material or supplemental submission, as applicable, should be protected from FOIL disclosure.

The FOIL-related materials described herein are not considered part of the Offeror's Bid submission and shall not be reviewed as a part of the Procurement's evaluation process.

Acceptance of the identified information by the Department does not constitute a determination that the information is exempt from disclosure

under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the Department.

b. Requested Redactions (USB Storage Drive):

At the time of submission, the Offeror is required to identify the portions of its submission that it is requesting to be redacted in the event that its submission is the subject of a FOIL request as follows.

The Offeror must provide an electronic copy of their Bid submission on a USB storage drive of the type outlined in IFB Section 2, which reflect the Offeror's requested redactions. The electronic documents must be prepared in PDF format. Each specific portion of the submission documents requested to be protected from FOIL disclosure must be identified using the Adobe "Mark for Redaction" function; do not use the "Apply Redactions" function; or by highlighting such portions in yellow. The resulting documents must show the Offeror's requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the USB storage drive must be complete submissions, including all Attachments. No section may be omitted from the USB storage drive even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, attachments, and charts, please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page. Do not request redaction of Department-supplied materials or information.

During the submission review and evaluation process, the Department may request additional information through clarifying letters. Any requested redactions for additional written material provided by the Offeror in response to the Department's requests also must be submitted following the instructions above.

2. Disclosure of Bid Contents

An Offeror is required to submit the signed Offeror's Certification Form (Attachment 1) with its Bid submission. This attachment sets forth the Offeror's attestation that the Offeror meets the minimum qualifications, and has binding authority to submit a Bid. Additionally, it acknowledges and attests to the MacBride Fair Employment Principles and Non-Collusive Bidding Certification as well as attestation the Offeror has read and will abide by New York State Finance Law 139 j-k Lobbying Law and its permissible contacts. It also sets forth the certifications regarding compliance with the Federal Americans with Disabilities Act, compliance with the New York State Public Officers Law, certification required under Executive Order No. 177 and certification required by New York State Finance Law section 139-I regarding written sexual harassment policies and Executive Orders 14 and 16, certifying the

offeror is not a Russian entity or doing business with a Russian entity.

3. New York Subcontractors and Suppliers

An Offeror is required to complete New York State Subcontractors and Suppliers section found in Attachment 1. 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 NYS, an Offeror for this IFB is strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés, or other supporting roles. When completing New York State Subcontractors and Suppliers section of Attachment 1, the Offeror should only provide the annual amount spent for services or supplies directly related to this contract for Subcontractors or Suppliers.

4. New York State Standard Vendor Responsibility Questionnaire

The Department recommends each Offeror file the required Questionnaire online via the New York State VendRep System. To use the VendRep System, please refer to <https://www.osc.state.ny.us/vendors/index.htm>.

The Department highly recommends Certifying and Submitting the New York State Vendor Responsibility Questionnaire via the New York State Office of the State Comptroller online portal. A person legally authorized to represent the Offeror must execute the questionnaire. The questionnaire must be completed by all Subcontractors as defined above.

By submitting a Bid submission, the Offeror agrees to fully and accurately complete the Questionnaire. The Offeror acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Offeror is responsible, and that the State will rely on the Offeror's responses to the Questionnaire when making its responsibility determination. The Offeror agrees that if it is found by the State that the Offeror's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

5. Consultant Disclosure Requirements

In 2006 the NYS State Finance Law was amended to require State contractors who provide consulting services to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include

information on any persons working under any subcontracts with the State contractor. The definition of contracts for consulting services includes any contract entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services.

In order to comply with this law the Bidder must complete the attached Attachment 21: Consulting Form A.

- A. Consulting Form A – If applicable, this form ([AC 3271-S](#)) will need to be submitted from all conditional awardees. The purpose of this form is to capture the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.
- B. State Consultant Services Contractor's Annual Employment Report ([AC 3272-S](#)) is to be used to report the information. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, Form B is required to be submitted each year the contract is in effect and is intended to capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st - March 31st).

6. New York State Tax Law Section 5-a

Tax Law § 5-a requires certain Offerors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to New York State Department of Taxation 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 Offeror's sales delivered into New York State is 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.

An Offeror receiving a conditional award is required to file the completed and notarized Form ST-220-CA with the Department certifying that the Offeror filed the ST-220-TD with DTF. The Offeror should complete and return the certification forms within (5) five Business Days from the date of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render an Offeror non-responsive and non-responsible. The Offeror must take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Offeror certification forms and instructions are provided below.

- A. Form ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Offeror, its Affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.
- B. Form ST-220-CA must be submitted to the Department. This form provides the required certification that the Offeror filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

SECTION 3: PROJECT SERVICES

For purposes of submitting a Bid, an Offeror must be capable of providing, at a minimum, all the mandatory services listed below for each specific lot. An Offeror may submit a Bid which covers either one or multiple lots. An Offeror may submit a Bid which covers one or multiple regions. Separate contract awards will be made for each Lot. The Department seeks to contract with multiple Offerors on a per Lot per Geographic Region basis.

Subsequent to the contract award, for each Lot, work will be assigned to a Contractor in a geographic region based on the following criteria in descending order:

- Timeliness in scheduling the service(s) needed;
- Past performance;
- Mileage to the Contractor's facility for the individual being referred; and
- Total cost of the service(s) requested;

These criteria will be considered on a case-by-case basis as DCS receives requests for services from its customer agencies.

No Guaranteed Work: Assignments to Contractor are issued at the discretion of the State. While it is the State's intent to issue work assignments hereunder, the Contractor shall have no cause of action conditioned upon the lack or number of work requests issued. A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the Department provides no guarantee of individual participation. The Contractor must furnish all services actually ordered at or below the Contract prices. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. The Department will purchase from Contractors who offer the services and pricing that best meet the needs of the Department based on the above criteria.

3.1 Project Services

Lot #1: Occupational Health and Pre-placement Examination Services

- **Occupational Health Examinations**

Medical monitoring of employees who may be exposed to chemical, biological and/or physical hazards is conducted for individuals in a variety of job titles and for many types of hazard exposures including: solvents, lead, heavy metals, asbestos, HIV, TB, rabies, hepatitis, noise, and radiation. Examinations to determine an individual worker's ability to wear personal protective equipment, such as a respirator, are also conducted. Typical examinations may include a medical/occupational history, complete physical examination, routine blood and urine tests, electrocardiogram, vision and hearing tests, and pulmonary function tests. The Contractor's medical examiner will determine whether the employee has developed an occupationally related illness, and make recommendations for further evaluation and/or remediation. Completion of EHS form *Employer Medical Examination Report As Required By OSHA* (Attachment 5) is required.

Employees may also be examined to determine if they are medically able to perform the duties of special programs such as firefighters, truck drivers, rescue teams and crisis intervention teams. The Contractor will be provided with the specific duties of these programs and the Contractor's examining physician must determine if the individual is medically and/or mentally able to perform such duties. Completion of a certification form may be required.

- **Pre-placement Examinations**

Pre-placement physical examinations are conducted for candidates who are being considered for appointment to a competitive class job for which there are predetermined and announced medical and physical standards. EHS will notify the Contractor of the type of testing to be performed. Typical examinations include similar testing as for occupational health exams and may also include drug testing.

The Contractor's medical examiner will make a determination as to whether the candidate meets the announced standards and thus can perform the duties of the position.

Completion of EHS form *Preplacement Examination Determination* (Attachment 6) is required.

Lot #1 Mandatory Diagnostic Testing and Laboratory Studies (M)

EHS may request as part of an occupational health or pre-employment examination those types of laboratory procedures and diagnostic tests as set forth below. The Contractor must be able to provide all the diagnostic tests and laboratory studies designated as “Mandatory”.

Audiometry: Pure tone air with audiologic history
ECG. Electrocardiogram (12 lead) with interpretation
Vision Test, including far and near each eye and binocular, with and without corrective lenses and peripheral vision each eye.
Color Vision Test - Ishihara color vision test using MacBeth easel lamp or equivalent
Chemistry Profile including: Albumin, Alk. Phosphatase, BUN, Calcium, Cholesterol, Chloride, Creatinine, Direct Bilirubin, G-Glutamyl Transpep., Globulin, Glucose, Iron, LDH, Magnesium, Phosphate, Potassium, Sodium, Total Bilirubin, Total Protein, Transaminase SGO, Transaminase SGP, Triglycerides, Uric Acid
Hematology Profile including WBC, RBC, Hemoglobin, Hematocrit, RBC Indices, Platelet Count, and WBC Differential
Complete Urinalysis including: Color, Appearance, PH, Specific Gravity, Ketones, Protein, Glucose, Blood, Bilirubin, Leukocyte Esterase, Nitrite, and Microscopic (WBC, RBC, Bacteria, and Epithelial Cells)
Complete Laboratory Profile (i.e., a Chemistry Profile, a Hematology and a Urinalysis; items 1, .2 and 3 above)
Lipid Panel, including Total cholesterol, HDL cholesterol, LDL cholesterol, Cholesterol/HDL cholesterol ratio and Triglycerides
Drug Screen. 10 panel w/ expanded opiates plus Confirmation & Chain of Custody (must be performed by a certified lab) List of drugs to be included:Amphetamines, Barbiturates, Benzodiazepines, Buprenorphine, Cocaine metabolites, Hydrocodone, Marijuana metabolites , Methadone, Methaqualone, Opiates, Oxycodone, Phencyclidine, Propoxyphene
Drug Screen. 10 panel w/ expanded opiates plus Confirmation & Chain of Custody (must be performed by a certified lab) List of drugs to be included:Amphetamines, Barbiturates, Benzodiazepines, Buprenorphine, Cocaine metabolites, Hydrocodone, Methadone, Methaqualone, Opiates, Oxycodone, Phencyclidine, Propoxyphene (no Marijuana metabolites)
Hepatitis B Surface Antibody
Hepatitis B Surface Antigen
Hepatitis B Core Antibody
Hepatitis C Antibody
Lead and ZPP - Blood (with OSHA questionnaire)
Lyme Antibody - ELISA w/confirmation by Western Blot
Measles Antibody Titer
Rubella Antibody Titer
Occult Blood (stool)
Varicella-Zoster Antibody Titer
PCB Level
PSA
Cholinesterase - serum

Lot #1 Optional Diagnostic Testing and Laboratory Studies (O) and Optional Additional Services (O)

- The services cited as “O” are optional services. They may be requested by the Department if offered and submitted as part of the Offerors proposal but the services are not required to be provided in order to submit a bid proposal.

- EHS may occasionally need the Contractor to provide Immunizations and Skin Tests, but this is not a mandatory service under the IFB.

Respirator fit testing – quantitative
Cardiovascular stress test, with interpretation and report
Chest x-ray with B-reading. Radiologic examination, chest PA 17” x 14” with B-Reading
Chest x-ray. Radiologic examination, chest and lateral, with interpretation
Spirometry, including graphic record, and results (must include FVC, FEVI, and %FEVI/FVC at a minimum)
Cholinesterase - RBC
Urine Dipstick only
Tetanus and diphtheria toxoids
Hepatitis B vaccine
Influenza vaccine
Mantoux test
Measles, mumps and rubella vaccine (MMR)
Rabies vaccine
Hepatitis A vaccine

Lot #2: Fitness-for-Duty / Agency Referral Consultative Services

- Comprehensive General Medical Examinations

Fitness-for-Duty / Agency Referral examinations are conducted for employees referred by State agencies to EHS for a variety of reasons, including numerous or lengthy sick leave absences, medical evaluation of employees on extended sick leave, and employees whose work performance may be adversely affected by what appears to be a medical or psychiatric condition, alcoholism, or drug abuse. The following information will typically be provided for Fitness-for-Duty / Agency Referral examinations:

- The reason for the referral including pertinent work history and a description of any problematic on-the-job behavior.

- Formal job description as well as information on the individual's actual job assignments and tasks.

- Statement as to whether the State agency contemplates or is willing to accept restrictions or make modifications in work assignments or working conditions in order that the individual's physical or mental condition can be accommodated.
- Reports from previous medical evaluations will be provided by EHS when available. However, the Contractor must provide its examining physician with records of any examinations the Contractor previously conducted of the referred individual.
- Limited General Medical Examinations

These evaluations are performed for clients who have already undergone a Comprehensive Medical Examination and are being seen for a reevaluation for the same medical problem.

Lot #2 Mandatory Diagnostic Testing and Laboratory Studies (M)

The types of laboratory and diagnostic procedures or other services to be completed by the Contractor either as a component of an agency referral examination or as a stand-alone procedure include:

Audiometry: Pure tone air with audiologic history
ECG. Electrocardiogram (12 lead) with interpretation
Vision Test, including far and near each eye and binocular, with and without corrective lenses and peripheral vision each eye.
Color Vision Test - Ishihara color vision test using MacBeth easel lamp or equivalent
Chemistry Profile including: Albumin, Alk. Phosphatase, BUN, Calcium, Cholesterol, Chloride, Creatinine, Direct Bilirubin, G-Glutamyl Transpep., Globulin, Glucose, Iron, LDH, Magnesium, Phosphate, Potassium, Sodium, Total Bilirubin, Total Protein, Transaminase SGO, Transaminase SGP, Triglycerides, and Uric Acid
Hematology Profile including WBC, RBC, Hemoglobin, Hematocrit, RBC Indices, Platelet Count, and WBC Differential
Complete Urinalysis including: Color, Appearance, PH, Specific Gravity, Ketones, Protein, Glucose, Blood, Bilirubin, Leukocyte Esterase, Nitrite, and Microscopic (WBC, RBC, Bacteria, and Epithelial Cells)
Complete Laboratory Profile (i.e., a Chemistry Profile, a Hematology and a Urinalysis; items 1, .2 and 3 above)
Lipid Panel, including Total cholesterol, HDL cholesterol, LDL cholesterol, Cholesterol/HDL cholesterol ratio and Triglycerides
Drug Screen. 10 panel w/ expanded opiates plus Confirmation & Chain of Custody (must be performed by a certified lab) List of drugs to be included:Amphetamines, Barbiturates, Benzodiazepines, Buprenorphine, Cocaine metabolites, Hydrocodone, Marijuana metabolites , Methadone, Methaqualone, Opiates, Oxycodone, Phencyclidine, Propoxyphene

Drug Screen. 10 panel w/ expanded opiates plus Confirmation & Chain of Custody (must be performed by a certified lab) List of drugs to be included:Amphetamines, Barbiturates, Benzodiazepines, Buprenorphine, Cocaine metabolites, Hydrocodone, Methadone, Methaqualone, Opiates, Oxycodone, Phencyclidine, Propoxyphene (No Marijuana metabolites)
Phlebotomy (if not included in the individual test fee)
Blood Alcohol level including Confirmation and Chain of Custody
Thyroid Panel
Hemoglobin A1 C
Testify at legal and administrative proceedings

Lot #2 Optional Additional Services (O)

- EHS may occasionally need the Contractor to provide the following services, but these are not mandatory services under the IFB:
- Optional (O) Subspecialty Agency Referral Examinations to Determine an Individual’s Ability to Work – EHS may occasionally need the Contractor to provide the following services, but these are not mandatory services under the IFB The types of subspecialty examinations and consultations that may be requested by EHS include Optional (O) Drug and Alcohol Testing – After Hours.
- EHS may occasionally need the Contractor to provide the following services, but these are not mandatory services under the IFB. Drug and alcohol screening services including specimen collection with Chain of Custody, laboratory analysis by a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory with confirmation, and confidential reporting on the next business day. The Contractor will provide drug and alcohol screening services after-hours. After-hours breath alcohol, blood alcohol, and/or urine drug testing may be requested on weekdays between the hours of 3:00 p.m. through 8:00 a.m. ET., weekends beginning at 3:00 p.m. through Monday 8:00a.m. ET. and 24 hours on New York State Holidays.

Cardiovascular stress test, with interpretation and report
Sleep Apnea Study
Spirometry, including graphic record, and results (must include FVC, FEVI, and %FEVI/FVC at a minimum).
Urine Dipstick only.
Urine drug screening - at Offeror's site
Urine drug screening - at off-site location
Breath alcohol screening - at Offeror's site
Breath alcohol screening - at off-site location
Blood alcohol testing - at Offeror's site
Audiology
Cardiology
Dermatology
Neurology
Ophthalmology
Orthopedics
Otolaryngology
Pulmonology
Sleep Medicine specialist
Psychiatric
MMPI-2
MMPI-3
SASSI
PAI
Records Review
Complete Psychological Assessment(including necessary testing and interview)
Neuropsychology
Pre-hearing preparation(Hourly)

Lot #3: Mobile Audiometric Services

New York State agencies, including the Department of Transportation, are required by the U.S. Occupational Safety and Health Administration (OSHA) and the NYS Public Employees Safety and Health (PESH) Act to provide hearing conservation programs for their at-risk employees. Basic elements of these programs include baseline audiograms, annual audiograms, calculation of standard threshold shifts, maintenance of records and training for workers in the use and fit of hearing protection. Conducting hearing tests for a group of employees at agency worksites or centralized locations is required to minimize time away from work. The Contractor must be capable of conducting mobile testing services as

required by the OSHA standard for, at a minimum, one hundred (100) persons in an eight (8) hour period.

3.2 Identification of Individuals for Evaluations

It is imperative that reasonable steps be taken by the Contractor to accurately identify the candidates presenting themselves for evaluation. The Contractor shall not conduct a medical evaluation unless one of the following forms of identification is received from the candidate by the Contractor:

- United States passport;
- Certificate of United States citizenship;
- Foreign passport;
- State-issued driver's license or I.D. card with a photograph or information, including name, sex, date of birth, height, weight, and color of eyes;
- US military card;
- US Permanent Resident Card;
- Application for Status as a Temporary Resident;
- School identification card with photograph;
- Voter's registration card;
- Identification card issued by federal, state, or local government agencies;
- Military dependent's identification card; or
- United States Coast Guard Merchant Mariner card.

3.3 Medical Reports

Medical and/or psychological information and records obtained or created by the Contractor can only be released to EHS. The Contractor may not release information to the individual's employing agency. All requests for release of medical information to third parties (i.e., the examined individual's doctor or lawyer) must be forwarded to EHS, immediately upon receipt, for EHS review and authorization prior to the release of said information. Additionally, the use and disclosure of personal health information by the Contractor will be subject to the Health Insurance Portability and Accountability Act (HIPAA) requirements

The report of the medical evaluation by the Contractor's medical examiner to the designated EHS physician must at a minimum contain the following elements for the types of examinations listed below:

- All Examinations
 - All results of the medical history, physical examination, ancillary tests, psychological tests, discussions, and conclusions must be submitted to EHS and must conform to accepted professional standards and practices.
 - Included on every form, test report and any other material must be the name and an identifying number, either EHS account or social security

number, of the examined individual. The individual's name, identification number, and date of the report must appear on the first page of the report typed on the Contractor's original letterhead. Typed on each subsequent page must be the name and identification number of the individual referred by EHS for evaluation.

- A copy of any medical reports brought to the examination by the individual or obtained via a medical release by the Contractor must be provided to EHS.
- All reports must be personally reviewed and signed by the Contractor's medical examiner who actually performed the examination. This requirement establishes the fact that the examiner who conducted the examination is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of diagnostic test results. The Contractor's medical examiner's signature on a report annotated "not proofed" or "dictated but not read" is not acceptable. The examiner's rubber stamp signature or a signature entered by another examiner, nurse, or any other person is not acceptable. The Contractor's examiner's name must be typed at the end of the report below the signature.
- Reports of pre-placement examinations that were not performed by a physician must be countersigned by the Contractor's physician assuming responsibility for the evaluation's accuracy, completeness and conformance with the requirements stated in this IFB and accepted medical practices.
- The Contractor's examiner performing the examinations must be available during the Contractor's normal working hours for telephone discussions to clarify or to answer any question regarding the report. Written responses must be received within 48 hours of the EHS inquiry.
- Complete confidentiality of each individual's information must be maintained. Reports and test results must not under any circumstances be released to the individual or the individual's employer except with the prior written direction of EHS, except as noted below.
- It is the responsibility of the Contractor's examiner to notify the examined individual of all significant abnormalities either at the time of the examination or subsequently. The examiner must also advise the examined individual of any need for follow-up care (for most abnormalities that are not related to the individual's work, the individual is referred to his/her physician for follow-up). A copy of any abnormal ancillary test should be provided to the individual.

- The examined individual should not be advised of: (1) whether s/he meets the medical standard for pre-placement exams; (2) whether s/he meets the certification requirements for an occupational health exam; and (3) the examiner's opinion regarding the individual's fitness to work for an agency.
- The Contractor shall not provide any reports, test results or opinions to the referring State agency unless specifically directed by EHS to do so. Any requests for information from the referring State agency should be directed to EHS.
- Occupational Health Examinations
 - If a History and Physical is ordered, then a complete occupational and medical history and complete physical examination report must be provided by the Contractor. The Contractor may use the *EHS Medical History Questionnaire for Occupational Health Examination Form* (Attachment 7).
 - A copy of all ancillary tests performed must be provided by the Contractor including:
 - ECG with interpretation
 - PFTs with interpretation, comparison to previous PFTs performed on the individual by the Contractor and completion of the *EHS Respiratory Questionnaire* (Attachment 8) form
 - X-ray reports including completion of the U.S. Department of Health and Human Services *Public Health Service Roentgenographic Interpretation Form* (Attachment 9)
 - Vision tests
 - Audiograms with completion of an audiologic history
 - Bloodwork, urinalysis, drug screens, and any other laboratory tests
 - A completed copy of any required OSHA forms such as the lead, asbestos, or respirator questionnaires must be provided by the Contractor.
 - A copy of the *Employer Medical Examination Report Required by OSHA* (Attachment 5) must be provided by the Contractor. All sections pertinent to the particular examination must be completed. The medical examiner must identify any abnormalities that may be the result of the employee's exposure to physical, chemical and/or biologic agents. The

examiner must also indicate their recommendations for further evaluation and/or remediation for every such abnormality noted. The medical examiner must not place any medical information concerning the examined individual on this form unless the abnormality is related to the individual's workplace exposures.

- Preplacement Examinations

- The Contractor's medical examiner must provide a completed medical history and physical examination report. The EHS form *Medical History Questionnaire for Preplacement Examinations* (Attachment 10) may be used for this purpose.
- A copy of all ancillary test reports must be provided by the Contractor.
- A copy of all consent forms signed by the individual must be provided by the Contractor.
- The Contractor's medical examiner's opinion as to whether the candidate meets the announced medical and physical standards established for the position must be provided by the Contractor. If the examiner determines a candidate does not meet the standards, the determination must specifically indicate what standard is not met, the medical reasons why the standard is not met, and what action the candidate must take to attempt to meet the standard. The examiner must complete EHS form *Preplacement Examination Determination* (Attachment 6).

- Fitness-for-Duty / Agency Referral Examinations

- The fitness-for-duty report must include the actual medical facts as well as a response to specific questions posed by the examined individual's agency. The Contractor's examining physician must render an opinion to the designated EHS physician regarding the individual's fitness for duty. In most cases, depending upon the specific questions posed by the agency, one of the following specific responses with the supporting documentation would be appropriate:
 - The individual is fit to perform the essential duties of the position;
 - The individual is not fit to perform the essential duties of the position with or without a reasonable accommodation; or
 - The individual is fit to perform the essential duties of the position with a reasonable accommodation (list specific accommodation(s)).

- The history and physical examination must be provided as a typed narrative of the findings and not in the form of responses to a questionnaire or a check-off list. The narrative report must include all specific tests and interpretations. The report should be sufficiently detailed and comprehensive to enable the designated EHS physician to determine independently the nature, severity, and duration of the impairment, and residual functional capacity.
- Audiogram Examinations
 - The Contractor must provide a testing summary of all workers tested at each location and a report summarizing the testing results of all the employees.
 - For each employee tested, the Contractor will prepare an audiometric test record that includes the employee's name and job classification, the date, the examiner's name, the date of the acoustic or exhaustive calibration, measurements of the background sound pressure levels in the testing area, and the employee's most recent noise exposure measurement.
 - For employees noted to have a Standard Threshold Shift (STS), the Contractor will prepare the following:
 - Individual summary and STS notification letter for each employee.
 - STS report.
 - OSHA Recordable Shift report.
- Time Frame for Reports

Final Reports are due to EHS as follows:

- Occupational Health and Audiogram Examination Reports are due fourteen (14) calendar days from the date of the examination.
- Pre-placement Examinations and Fitness-for Duty / Agency Referral Examination Reports are due seven (7) calendar days from the date of the examination.

3.4 Appointment Scheduling

- All occupational health pre-placement, fitness-for-duty and psychological examinations will be scheduled with the Contractor by EHS. The Contractor shall not schedule examinations directly for a Customer Agency. For the purposes of this IFB, Customer Agency is understood to mean those NYS departments and agencies to which EHS provides medical examination

services mandated or authorized by Civil Service law, as well as occupational health examination, screening, diagnostic testing and immunization services.

- The Contractor shall schedule and conduct all examinations within seven (7) Business Days from receipt of notification from EHS that a given examination is required, unless a different date is agreed to by EHS on a case-by-case basis.
- All appointments shall be scheduled by the Contractor so that adequate time is spent by the examiner to provide a complete examination according to standard medical practices. Appointments must be scheduled to minimize waiting time for individuals referred to the Contractor by EHS.
- If practicable, ancillary testing must be scheduled to be performed on the same day as the physical examination and at the same site, except where otherwise specifically approved by EHS.
- EHS form *Consultant Examination Request and Authorization* (Attachment 11) signed by the designated EHS physician will be sent to the Contractor authorizing the Contractor to conduct a medical evaluation and specifying services expected to be included in the examination. The Contractor shall not conduct a medical evaluation unless said form is received by the Contractor from the designated EHS physician.
- Authorization to perform any additional tests or consultations which the examiner feels are medically indicated but which have not been ordered on the *Consultant Examination Request and Authorization* form, must first be obtained from EHS by the Contractor. Failure to obtain this authorization may result in denial of payment for such additional tests or consultations.
- The Contractor shall not schedule or conduct audiometric testing unless and until such prior authorization is received by the Contractor from an authorized representative of the Customer Agency.
- The Contractor shall schedule and conduct audiometric testing and other services such as training within sixty (60) Business Days from receipt of notification from the Customer Agency that a given Examination Session is required, unless a different date is agreed to by the Customer Agency, on a case-by-case basis.
- All appointments shall be scheduled by EHS so that adequate time is spent by the examiner to provide a complete examination in accordance with OSHA regulations.
- As far as practicable, the Contractor must schedule any required retesting such that the retest is performed after a period of quiet. Only when impracticable

and at the direction of the authorized representative of the Customer will retesting be conducted on the same day and at the same site.

3.5 Facility Requirements

- The Contractor shall provide facilities for clients to be evaluated.
- The Contractor's facilities must be accessible to disabled individuals in accordance with the Americans with Disabilities Act. Such facilities shall include the following requirements, at a minimum:
 - Entrance to building usable by wheel-chaired persons.
 - Toilet usable by disabled persons.
 - Doors used by disabled persons must be at least 32" wide.
 - Elevators, if more than the first floor, to be used by disabled persons.
- All the Contractor's facilities must meet New York State and Federal regulations. All testing equipment must meet all New York State and Federal regulations for certification (including all x-ray and laboratory equipment).
- The Contractor must ensure that all equipment, including audiometric test equipment, is maintained in accordance with the requirements of the manufacturer and meets the requirements for such test equipment as required by Federal regulations.

3.6 Staffing Requirements

- In the *Offeror's Certification Form* (Attachment 1), the Contractor must designate a single account executive ("Project Manager") accountable to the State and responsible for ensuring that the needs of the State are met. These activities include scheduling clients, coordinating activities with EHS, and resolving contractual or administrative issues, including but not limited to billing and scheduling problems. The Project Manager shall also notify the Department of any actual or anticipated events impacting the delivery of project services and present options available to minimize or eliminate the impact of those events on the delivery of services.
- The Offeror's medical staff assigned to perform project services, including all physicians, psychologists, audiologists, physician's assistants and nurse practitioners, must be licensed in NYS.

- Physicians providing occupational health services must be Board eligible or certified in occupational medicine, internal medicine, emergency medicine or family practice. All subspecialty physicians must be Board eligible or certified in that specialty.
- The Contractor's and Key Subcontractor's, if any, technical staff assigned to perform project services under the Contract must be: (1) properly trained; (2) competent to perform the required testing; and (3) meet all applicable New York State and Federal regulations.

SECTION 4: BID SUBMISSION

This section of the IFB sets forth the requirements for the Offeror's Bid submission. The Department will consider for evaluation and selection purposes only those submissions from responsible and responsive Offerors that the Department determines to be in compliance with the requirements set forth in this section of the IFB and in the format as described in Section 2.1 Rules Governing Conduct of Competitive Procurement Process. Any Offeror which fails to satisfy any of these requirements including the format of their bid submission may be eliminated from further consideration.

The Offeror's *Bid submission* must respond to all of the following items as set forth below in the order and format specified and using the forms set forth in this IFB. Additional details pertaining to the required forms are found in Attachment 22 of this IFB.

4.1 Offeror's Certification Form

The Offeror must complete and submit an executed copy of the *Offeror's Certification Form* (Attachment 1) attesting that it meets or exceeds the criteria for eligibility to bid as set forth in Sections 2 and 3 of this IFB. A person legally authorized to represent the Offeror must execute this certification.

4.2 Formal Offer Letter

The Offeror must submit a formal offer in the form of the *Formal Offer Letter* (Attachment 2). The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the State. Except as otherwise permitted under section 2.1.6, Bid Deviations, the Offeror must accept the terms and conditions as set forth in this IFB, *Standard Clauses for New York State Contracts* (Appendix A), *Standard Clauses for All Department Contracts* (Appendix B), *Information Security Requirements* (Appendix C), *MWBE/EEO/SDVOB Requirements* (Appendix D) and *Insurance Requirements* (Appendix E) and agree to enter into a Contractual Agreement with the Department containing, at a minimum, the terms and conditions identified in this IFB and appendices as cited herein. If an Offeror proposes to include the services of a

Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as “Prime Contractor.” The Department will consider the Prime Contractor solely responsible for contractual matters.

4.3 Executive Summary

The Executive Summary must include the following information:

- The name and address of the Offeror’s main and branch offices, and the name of the senior officer(s) who will be responsible for this account. (Attachment 13)
- An organizational chart to identify the Offeror’s staff and staff from any Subcontractor, including their name and title, to be used in delivering the Project Services.
- Any certifications or Licenses that may be required to perform the job duties found in Section 3.
- A *Medical and Technical Staff Roster* (Attachment 14) listing the Offeror’s proposed Medical and Technical staff members, including the Medical and Technical staff members of Key Subcontractors.
- Offeror must complete the *Project Services Matrix* Form (Attachment 15) confirming all examinations and testing services the Offeror is willing to provide. If the Offeror is willing to provide diagnostic testing and laboratory studies, the Offeror must identify the laboratories to be used and copies of the required certifications.

The Offeror must submit Attachments 13, 14 and 15 along with the Organizational chart and proof of certifications/licenses to fulfill the Executive Summary requirement

4.4 Subcontractors and/or Affiliates

The Offeror must complete the *Key Subcontractors or Affiliates* form (Attachment 12) to identify all Subcontractors or Affiliates with whom the Offeror subcontracts to provide Project Services. For purposes of reporting in the *Subcontractors or Affiliates* form (Attachment 12), Subcontractors include (1) all vendors who will provide \$100,000 or more in Project Services over the term of the Contract that results from this IFB and (2) any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the *Medical Technical Staff Roster* (Attachment 14). For each Subcontractor identified, the Offeror must complete and submit the *Key Subcontractors or Affiliates* form (Attachment 12) and indicate whether or not, as of the date of the Offeror’s submission, a subcontract has been executed between the Offeror and the Subcontractor for services to be provided by such subcontractor relating to the IFB. For the purpose of this IFB, Affiliate is defined as a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.

SECTION 5: FINANCIAL COST SUBMISSION

The Offeror's Financial Cost submission must comply as follows:

5.1 General Pricing Assumptions (For all Lots)

- The Fixed Fees proposed by the Offeror must be inclusive of all direct and indirect costs, overhead and travel expenses, fees and profit.
- The sole compensation for the Contractor under the Contract will be payments based on pricing indicated in the Contractor's Financial Costs as finally approved by the Parties.
- The Contractor shall invoice, in monthly arrears, for Project Services rendered, together with full supporting detail(s) to the State's reasonable satisfaction.

OSC shall render payment for invoices under the Contract in accordance with ordinary State procedures and practices. The Contractor shall certify the accuracy of all Contractor invoices prior to their submission and the State will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law. Submission of an invoice and payment thereof shall not preclude the Department from reimbursement or demanding a price adjustment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Contract.

The Financial Cost submission must contain the following information:

Lot #1: Occupational Health and Pre-placement Services

An Offeror proposing to provide Lot #1 Project Services must complete and submit the Lot #1 Cost submission excel file. The offeror must provide a fixed, all-inclusive fee for each occupational health and preplacement examination, including the cost of completing the appropriate occupational/medical history and the associated required forms. The fixed fee to perform an ancillary test(s) as ordered by EHS will be added to the cost of the basic examination performed. An Offeror must provide their coding and the description of the service provided as it appears on their invoice.

If an Offeror wishes to perform Project Services in more than one Geographic Region, an offeror must complete the separate labeled tab in the excel file for each region the Offeror is bidding on. The cost and availability of services in the region should be clearly indicated. The Offeror must provide all the required information for all the items listed as Mandatory (M)

Fees should be quoted for each of the individual items listed for each of the four years and one two-year renewal period. The Offeror must, at a minimum, quote a fixed fee for each service designated as "Mandatory" ("M") for each year of the four years and one two-year renewal period of the Contract for the delivery of Project Services as set forth the IFB Section 3. If an Offeror is unable to provide a service designated as "Optional" ("O") the Offeror must indicate on the form that this service is not available by indicating "N/A" under the associated fee. While it is not necessary for an Offeror to provide any "Optional" services, an Offeror's inability to offer those services designated as "Mandatory" will result in rejection of the Offeror's Bid submission.

The Offeror must quote fixed fees for each year of the four years and one two-year renewal period of the Contract (as indicated within the excel file) Failure to do so may result in rejection of the Offeror's Bid submission.

Lot #2: Fitness-for-Duty / Agency Referral Consultative Services

An Offeror proposing to provide Lot #2 Project Services must complete and submit the Lot #2 Cost submission excel file. The offeror must provide a fixed, all-inclusive fee for performing fitness-for-duty evaluations, including the cost of completing the required written report and the associated required forms. The fixed fee to perform an ancillary test(s) as ordered by EHS will be added to the cost of the basic examination performed. An Offeror must provide their coding and the description of the service provided as it appears on their invoice.

If an Offeror wishes to perform Project Services in more than one Geographic Region, an offeror must complete the separate labeled tab in the excel file for each region the Offeror is bidding on. The cost and availability of services in the region should be clearly indicated. The Offeror must provide all the required information for all the items listed at Mandatory (M)

Fees should be quoted for each of the individual items listed for each of the four years and one two-year renewal period. The Offeror must, at a minimum, quote a fixed fee for each service designated as "Mandatory" ("M") for each year of the four years and one two-year renewal period of the Contract for the delivery of Project Services as set forth the IFB Section 3. If an Offeror is unable to provide a service designated as "Optional" ("O") the Offeror must indicate on the form that this service is not available by indicating "N/A" under the associated fee. While it is not necessary for an Offeror to provide any "Optional" services, an Offeror's inability to offer those services designated as "Mandatory" will result in rejection of the Offeror's Bid submission.

The Offeror must quote fixed fees for each year of the four years and one two-year renewal period of the Contract as indicated within the excel file, failure to do so may result in rejection of the Offeror's Bid submission.

Lot #3: Mobile Audiometric Services

An Offeror proposing to provide Lot #3 Project Services must complete and submit the Lot #3 Cost submission excel file. The offeror must provide a fixed, all-inclusive fee and all fees quoted for the Project Services performed during an Examination Session shall include the training of workers in the use and fit of hearing protection as required by OSHA standard, any required retesting, and the cost of completing associated required forms/reports. An Offeror must provide their coding and the description of the service provided as it appears on their invoice.

If an Offeror wishes to perform Project Services in more than one Geographic Region, an offeror must complete the separate labeled tab in the excel file for each region the Offeror is bidding on. The cost and availability of services in the region should be clearly indicated. The Offeror must provide all the required information for all the items listed as Mandatory (M)

The Offeror must quote fixed fees for each year of the four years and one two-year renewal period. of the Contract as indicated within the excel file, failure to do so may result in rejection of the Offeror's Bid submission.

SECTION 6: EVALUATION AND SELECTION CRITERIA

The Department seeks to contract with multiple Offerors on a per Lot, per Geographic Region, basis. The Department intends to award multiple contracts for each Lot. Award shall be made by each Lot and Region to all responsive and responsible Bidders who meet the minimum qualifications and offer reasonable prices as determined by the Department; and enter into a written contract with the Department under the terms and condition of this IFB.

The Department will Review the Offerors' Submissions in accordance with provisions set forth in section 1.6 Offeror Eligibility of this IFB to ensure the Offeror meets the eligibility requirements to submit a bid.

The Department will notify all Offerors of either a tentative Contract Award or Non-Award to the best of its ability based on the Timeline of Key Events listed in Section 1.7 of this IFB.

6.1 Reasonableness of Pricing

In accordance with State Finance Law, the pricing will be evaluated to determine reasonableness in the following manner:

Step 1:

Proposed Annual Unit Costs from all responsive bids for each mandatory service in Lots 1,2 and 3 will be averaged to create an average unit cost per mandatory service, Lot, and Geographic Region.

DCS reserves the right to remove inordinately low or high bid rates from the calculation of the average unit cost if in the judgment of DCS, the inclusion of the proposed cost would skew the results.

Step 2:

Each Bidder's Proposed Annual Unit Cost for each mandatory service per Lot year and Geographic Region will be compared to the average unit cost for each mandatory service for each Lot, year and Geographic Region. If a Bidder's proposed cost is at or less than 150% of the Annual average unit cost for the mandatory service per Lot, year and Geographic Region, the Bidder's proposed cost for that mandatory service shall be deemed reasonable.

Example:

(Rates shown in chart are for demonstration purposes only.)

Lot 1, Region 1, A. Occupational Health Examinations.

Bidder Name	Proposed Annual Unit Cost Year 1	Proposed Annual Unit Cost Year 2	Proposed Annual Unit Cost Year 3	Proposed Annual Unit Cost Year 4	Proposed Annual Unit Cost Year 5
Bidder A	\$73.00	\$76.00	\$76.00	\$79.00	\$79.00
Bidder B	\$60.00	\$60.00	\$60.00	\$60.00	\$60.00
Bidder C	\$62.00	\$65.00	\$68.00	\$71.00	\$74.00
Average unit cost (Bidder A + Bidder B + Bidder C) divided by 3	\$65.00	\$67.00	\$68.00	\$70.00	\$71.00
Maximum unit cost (Avg unit cost * 150%)	\$97.50	\$100.50	\$102.00	\$105.00	\$106.50

Rates at or below the Average Unit Cost X 150% will be deemed reasonable.

If any of the Bidder's unit costs are greater than the average unit cost X 150%, the Bidder will be notified and requested by DCS to reduce its unit cost for that service, year, lot and Geographic region to the corresponding Maximum Unit Cost. Should the Bidder choose to deny this request, the Bidder's complete Bid for that Lot and Region shall be deemed to have failed and will not be considered for an award.

DCS reserves the right to determine reasonability if there are fewer than three bids for a Lot and Geographic Region by such means including but not limited to other state or

federal agency contract pricing, market rate analysis, historical pricing, and statements from the vendors documenting that such charges to the State are better, equal to or lower than that charged to other government agencies.

6.2 Assignment of Work

The Department reserves the right to assign work based on a variety of factors including but not limited to:

- Timeliness in scheduling the service(s) needed;
- Past performance;
- Mileage to the Contractor's facility for the individual being referred; and
- Total cost of the service(s) requested;

Assignments to Contractor are issued at the discretion of the Department. While it is the Department's intent to issue work assignments hereunder, the Contractor shall have no cause of action conditioned upon the lack or number of work requests issued. A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the Department provides no guarantee of individual participation. The Department will purchase from Contractors who offer the services and pricing that best meet the needs of the Department based on the above criteria.

SECTION 7: ADDITIONAL TERMS AND CONDITIONS

1. Entire Contract

This resulting Contract, including all appendices, constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, except as otherwise provided herein. The Contract is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the Office of the State Comptroller of the State of New York and subject to the termination provisions contained herein.

2. Cooperation with Investigations and Audits

In addition to the Audit Authority requirements specified in Appendices A and B to this Agreement, the Contractor agrees to cooperate with the Department, any other authorized State or Federal Department, and any law enforcement authority, in the investigation, documentation and litigation of any alleged illegal act, misconduct or unethical behavior related to the IFB and/or Agreement, or in connection with any audit.

3. Reports Ownership & Error Corrections

a) In addition to ownership provisions set forth elsewhere in Appendices A and B, the Contractor agrees that information and documents developed pursuant to the Agreement are the property of the State of New York and that the Contractor will not discuss such information, documents and systems with a third party without the express written authorization of the Department.

b) The Contractor shall correct any and all errors in any reports, materials and/or documents provided or prepared by the Contractor pursuant to this Agreement provided the Department notifies the Contractor of such errors and, if required, furnishes to the Contractor data and information the Department may be required to provide in order for the Contractor to make such corrections after delivery of any such report, material, document or service. In regard to corrections required due solely to an error made by the Contractor, the Contractor will correct such errors at no cost to the Department.

4. Confidentiality

In addition to the Confidentiality and Non-Disclosure provisions cited in Appendix B and the provisions related to the "Use and Disclosure of Protected Health Information", the Contractor will be required to comply with the following confidentiality provisions:

- A. Individually identifiable information relating to any participant shall be held confidential and shall not be disclosed by the Contractor, its officers, agent and employees or subcontractors, without the prior written approval of the applicant, the President of the Commission or his agent, or except as permitted, or as required, by federal or State law.
- B. Medical information and records obtained or created by the Contractor can only be released to EHS, or as provided for in the Agreement. The Contractor may not release information to the State agency where an individual is employed or is a candidate for employment. Release of medical information generated pursuant to the Agreement is subject to Part 82 of the Civil Service Rules which prohibits the release of such information except in the following circumstances:
 - 1. Upon written authorization of the subject of the records on a form prepared by the Department;
 - 2. When required by law or court order, provided that notification is made to the subject of the record prior to such disclosure, unless such notification is prohibited by law: and,
 - 3. Under no circumstances shall medical records or their contents be released directly to a State agency other than EHS unless such release is mandated by statute.

c) the Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of the services under the Agreement, including any information provided by the Department, except as required by subcontractors or agents solely for the purpose of carrying out obligations under the Agreement or as required by law.

d) The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or applicable subcontractors contains a provision that strictly conforms to the provisions of this Article.

5. Use and Disclosure of Protected Health Information

- a. For purposes of this Section, the term “Protected Health Information” (“PHI”) means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein as the “Department’s PHI.”

- b. The Contractor acknowledges that both the Department and the Contractor are “health care providers” as that term is defined in HIPAA’s implementing regulations at 45 CFR 160.103, and that consequently both the Department and the Contractor are “covered entities” under HIPAA. The Contractor further acknowledges that the Contractor is a HIPAA “business associate” of the Department as a consequence of the Contractor’s provision of medical services on behalf of the Department within the context of the Contractor’s performance under this Agreement, and that the Contractor’s provision of services will involve the disclosure to the Contractor of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Contractor’s disclosure to the Department of individually identifiable health information as a consequence of the services performed under this Agreement.

- c. The disclosure of any medical information and medical records, including PHI, generated pursuant to this Agreement is subject to 4 NYCRR Part 82, which prohibits the release of such information except in the following circumstances:

- a. Upon written authorization of the subject of the records on a form prepared by the Department;
 - b. When required by law or court order, provided that notification is made to the subject of the record prior to such disclosure, unless such notification is prohibited by law; and
 - c. Medical information and records obtained or created by the Contractor may be released only to the Department. The Contractor may not release information to the State agency (other than the Department) where an individual is employed or is a candidate for employment unless such disclosure is mandated by statute.
- d. Permitted Uses and Disclosures of DCS' PHI. The Contractor may use and/or disclose the Department's PHI solely in accordance with the specifications set forth in this Agreement. [45 CFR §164.504(e)(2)(i)].
 - e. Nondisclosure of the Department's PHI. The Contractor shall not use or further disclose the Department's PHI otherwise than as permitted or required by this Agreement or as otherwise required by law. [45 CFR §164.504(e)(2)(ii)(A)].
 - f. Safeguards. The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for by this Agreement. [45 CFR §164.504(e)(2)(ii)(B)]. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.
 - g. Reporting of Disclosures. The Contractor shall report to the Department any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement of which the Contractor becomes aware. [45 CFR §164.504(e)(2)(ii)(C)].
 - h. Associate's Agents. The Contractor shall ensure that any agents or subcontractors to whom it provides the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, agree to the same restrictions and conditions that apply to the Contractor with respect to the Department's PHI under this Agreement. [45 CFR §164.504(e)(2)(ii)(D)].
 - i. Availability of Information to the Department. The Contractor shall make available to the Department such information as the Department may require to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures with respect to Department's PHI in accordance with HIPAA and its implementing regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR §164.504(e)(2)(ii)(E) and (G)].

- j. Amendment of the Department's PHI. The Contractor shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations, including, but not limited to, 45 CFR Section 164.526. The Contractor shall, as directed by the Department, incorporate any amendments to the Department's PHI into copies of such Department's PHI maintained by the Contractor. [45 CFR 04(e)(2)(ii)(F)].
- k. Internal Practices. The Contractor shall make its internal practices, books, and records relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to the Department and to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Contractor's compliance with HIPAA and its implementing regulations. [45 CFR §164.504(e)(2)(ii)(H)].
- l. Disposition of the Department's PHI. At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, that the Contractor still maintains in any form and retain no copies of such information. Alternatively, if such return or destruction is not feasible, the Contractor shall extend indefinitely the protections of this Agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the Department's PHI infeasible. [45 CFR §164.504(e)(2)(ii)(I)].
- m. Termination under HIPAA. This Agreement shall be terminated by the Department if the Department determines that the Contractor has violated a material term of this Article or of the Agreement with respect to the Contractor's obligations under this Article. [45 CFR §164.504(e)(2)(iii)].

SECTION 8: DRAFT CONTRACTUAL PROVISIONS

The successful bidder will be required to execute a written contract with the Department. A sample of the Department's contract is attached to this IFB as Attachment 19.