

Exhibit 1: DRAFT CONTRACTUAL PROVISIONS

This section sets forth the draft contractual provisions for the resulting contract.

Contract Number: C000750

THIS Agreement (“Agreement” or ‘Contract’) effective [date], is entered into by and between New York State Department of Civil Service (“Department” or “DCS”), having its principal office at the Empire State Plaza, Albany, NY, 12239 and **[enter firm’s name]** (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at **[enter address]**, and collectively hereinafter referred to as “the Parties.”

WITNESSETH

WHEREAS, on [DATE], the Department, issued an Invitation for Bid (“IFB”) titled, “Clinical Laboratory Services,” to competitively secure the services of a qualified organization, either directly or through subcontracts with qualified organizations, to perform the Project Services required by this IFB. The services are as follows:

- A. Clinical laboratory testing services;
- B. Phlebotomy and other specimen collection services;
- C. Specimen courier services; and
- D. Testimony at legal and/or administrative proceedings.

WHEREAS, after thorough review and evaluation by the Department of Proposals received in response to the IFB, the Contractor’s Proposal was selected as representing the lowest cost to the State by a responsive and responsible bidder; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver Project Services, in the manner set forth in the IFB and the Contractor’s Proposal, pursuant to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the Parties agree as follows:

ARTICLE I: CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS

- 1.1 The Contractor is responsible for providing Project Services, in such a manner so as to be in compliance with the requirements as set forth in the Agreement and the IFB and for meeting all contractual obligations set forth in this Agreement, including all exhibits, and any subsequent amendments mutually agreed to in writing between the Parties. Contractor acknowledges that the Agreement is being entered into by NYS in reliance on

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Contractor's representations concerning the particular qualifications, experience, financial standing, management expertise and technical expertise of the Contractor and its staff assigned and subcontractors, if any, engaged to provide Project Services under this Agreement.

Throughout the contract term of this Agreement, in the event that there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, the Contractor is required to provide notice and details of any such change to NYS via written notice immediately when such is first known by Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors.

"Substantial" or "material" change shall be defined to include, but not be limited to, sale, acquisitions, mergers or takeovers involving the Contractor, its corporate affiliates, subsidiaries or divisions or partners which result in a change in the controlling ownership or assets of such entity after the submission of the Proposal; or entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of Contractor's, its corporate affiliates, subsidiaries or divisions, or partners' business or property; or action by Contractor, its corporate affiliates, subsidiaries or divisions, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries or divisions, or partners.

- 1.2 The Contractor's obligations to perform under the Agreement shall not be affected or impaired by any reorganization, consolidation or merger to which the Contractor is, or may become, a party. In any such event, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

- 2.1 The term of this Agreement shall be for a period commencing as of **[DATE]**, and shall continue for a period of five years.

In accordance with New York State policy and New York State Finance Law section 112(2), the resulting contract 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).

- 2.2 The Agreement is subject to amendment(s) only upon consent of the Parties, reduced to writing and approved by the Attorney General's Office (AG) and the Office of the New York State Comptroller (OSC).

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ARTICLE III: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

- 3.1 The Agreement shall be composed solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:
- 3.2 In the event of any inconsistency in, or conflict among, the document elements of the Agreement such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order referenced in the IFB section 2.
- 3.3 All prior agreements, representations, statements, negotiations and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.
- 3.4 Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation, or other entity, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.
- 3.5 The terms, provisions, representations, and warranties contained in the Agreement shall survive performance hereunder.

ARTICLE IV: LEGAL AUTHORITY TO PERFORM

- 4.1 The Contractor represents that the Contractor possesses the legal authority to perform Project Services in accordance with the terms and conditions of the Agreement.
- 4.2 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering Project Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Project Services are to be delivered.
- 4.3 The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement, or which may affect performance of the Contractor's duties under the Agreement.

ARTICLE V: PROJECT SERVICES

[Sections 3 of the IFB and any amendments of the IFB inserted here including all official answers to the IFB]

ARTICLE VI: PAYMENT FOR SERVICES

- 6.1 The Contractor will be reimbursed for Project Services rendered in accordance with the provisions of Attachment 8 Schedule of Fees and consistent with Section 5.1 of the IFB.

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The Contractor is not on retainer. The Contractor shall invoice the Department/Customer Agency, as applicable, in accordance with the provisions set forth herein, for Project Services rendered, together with full supporting detail(s) to the State's satisfaction.

- 6.2 After the Department and/or the Customer Agency, as applicable, approves the Contractor's invoice, the Department or the Customer Agency, as applicable shall process the Contractor's invoice to OSC for payment. OSC shall render payment for invoices under the Agreement in accordance with ordinary State procedures and practices. The Contractor shall certify the accuracy of all Contractor invoices prior to their submission to the Department/Customer Agency, as applicable and the Department/Customer Agency, as applicable 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/Customer Agency, as applicable 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 Agreement.
- 6.3 The Contractor warrants that all of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of this Agreement, the Contractor enters into arrangements with any other customers providing benefits which are equal to or greater than those benefits to be provided under this Agreement at more favorable terms, this Agreement shall thereupon be deemed amended to provide the same to the Department and its Customer Agencies.
- 6.4 The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the AG and OSC.

ARTICLE VII : INSURANCE REQUIREMENTS

- 7.1 As of the start date of the Contract and throughout its entire term, the Contractor, and its Key Subcontractor(s), if any, must have at least the minimum standard policy or policies covering the obligations of the Contractor and its Key Subcontractors required under the New York Workers' Compensation Law.
- 7.2 As of the start date of the Contract and throughout its entire term, the Contractor, and its Key Subcontractor(s), if any, must have the policy or policies covering the obligations of the Contractor and its Key Subcontractors required under Appendix E, Insurance Requirements.

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ARTICLE VIII: RECORDS AND INFORMATION TO BE FURNISHED

- 8.1 The DCS and its Customer Agencies, as applicable, shall furnish to the Contractor all reports and information which the Contractor may reasonably require with regard to any matters pertaining to the delivery of Project Services under this Agreement.

ARTICLE IX: MODIFICATION OF REQUIRED SERVICES

- 9.1 In the event that laws or regulations enacted by the federal government and/or the State of New York have an impact upon the conduct of this Agreement in such a manner that the Department determines that any requirements of the Agreement must be revised, the Department shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 9.2 In the event that NYS and its public employee unions enter into collective bargaining agreements that have an impact upon the conduct of this Agreement in such a manner that the Department determines that any requirements of the Agreement must be revised, the Department shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 9.3 Change Requests and travel authorizations may be used for enhancements or modifications pursuant to Section 6.1 of the IFB

ARTICLE X: ADDITIONAL PROVISIONS

The Offeror that is determined to provide the Best Value to the Department shall be notified of its conditional award of Contract subject to the successful development of a Contract. The resulting Contract shall incorporate the requirements set forth in Section 6 of the IFB.

ARTICLE XI: NOTICES

- 11.1 The Contractor shall immediately notify the Department upon learning of any situation that can reasonably be expected to adversely affect the delivery of Project Services under the Agreement. If such notification is verbal, the Contractor shall submit to the Department a written description of the situation and a recommendation for its resolution within seven (7) Business Days of learning of the situation.
- 11.2 All notices permitted or required hereunder shall be in writing and shall be transmitted via certified or registered United States mail, return receipt requested; by personal delivery; by expedited delivery service; or by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

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State of New York Department of Civil Service

Name: To be completed upon award
Title:
Address:
Telephone Number:
E-Mail Address:

[Contractor Name] To be completed upon award
Name:
Title:
Address:
Telephone Number:
E-Mail Address:

- 11.3 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- 11.4 The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE XII: COOPERATION WITH INVESTIGATIONS AND AUDITS

- 12.1 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.
- 12.2 If the Contractor has an independent audit performed of the records relating to this Agreement, a certified copy of the audit report shall be provided to the Department within ten (10) days after receipt of such audit report by the Contractor.

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ARTICLE XIII: REPORTS OWNERSHIP & ERROR CORRECTIONS

- 13.1 In addition to ownership provisions set forth elsewhere in Appendices A and B, the Contractor agrees that information and documents and data developed pursuant to the Agreement are the property of the State of New York and that the Contractor will not discuss such information, documents, data and systems with a third party without the express written authorization of the Department.
- 13.2 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.

ARTICLE XIV: TRANSITION, CLOSE-OUT AND TERMINATION OF Contract

In addition to the termination provisions specified in Appendices A and B to this Agreement, the resulting Contract shall incorporate the requirements set forth in this IFB.

- 14.1 Mitigation of Costs. The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.
- 14.2 Individually identifiable information relating to any participant shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees or subcontractors, without the prior written approval of the Department, or except as permitted, or as required, by federal or State law.
- 14.3 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.
- 14.4 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.

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ARTICLE XVI: ENTIRE AGREEMENT

The Contract, including all appendices, constitutes the entire Contract 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.

Agency Code: 08000
Contract Number: C000750

IN WITNESS WHEREOF, the Parties hereto have hereunto signed this AGREEMENT on the day and year appearing opposite their respective signatures.

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

Contractor Certification: By signing I certify my express authority to sign on behalf of myself, my company, or other entity and full knowledge and acceptance of this Agreement and all appendices. By signing, I affirm my understanding of and agreement to comply with the Department's procedures relative to the Procurement Lobbying Law as required by State Finance Law §139-j and §139-k.

[Contractor]

New York State
Department of Civil Service

Name: _____

Name: Katelyn Wilder

Title: _____

Title: Director of Financial Administration

By: _____

By: _____

Date: _____

Date: _____

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Approved as to form: _____ Approved: _____

Letitia James
ATTORNEY GENERAL

Thomas P. DiNapoli
STATE COMPTROLLER

By: _____ By: _____

Date: _____ Date: _____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }

SS.:

COUNTY OF _____ }

On the ___ day of _____ in the year 20__ , before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she/they maintains an office in the Town of _____, County of _____, State of _____; and further that:

____ (If an individual): he/she/they executed the foregoing instrument in he/she/they name and on his/her/their own behalf.

____ (If a corporation): he/she/they is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he/she/they is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she/they executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

____ (If a partnership): he/she/they is the _____, the partnership described in said instrument; that, by the terms of said partnership, he/she/they is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he/she/they executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

____ (If a limited liability company): he/she/they is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that, he/she/they is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he/she/they executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public _____ Date: _____