

SECTION II: PROCUREMENT PROTOCOL AND PROCESS

A. RULES GOVERNING CONDUCT OF PROCUREMENT PROCESS

1. Time Line of Key Events

Release Date of 2016 HMO Specifications	April 23, 2015
Exhibit I.K Procurement Lobbying Offeror's Affirmation of Understanding & Agreement Due Date	see * below
Questions Due Date:	May 7, 2015
Release Date of Official Responses to Questions	May 21, 2015
Exhibit I.J Notice of Intent	May 26, 2015
Submission Due Date	June 4, 2015, 3:00 PM ET
Anticipated Notice of Approval/Disapproval Date	August 28, 2015
Rate Submission Deadline	September 1, 2015
Anticipated Contract Start Date	January 1, 2016

- * Prior to the HMO's initial contact with the Department, the HMO shall complete and submit Exhibit I.K Procurement Lobbying Offeror's Affirmation of Understanding & Agreement to the HMO Procurement Manager.

2. Procurement Lobbying Limitations

- a. Pursuant to State Finance Law §139-j and §139-k, this solicitation imposes certain procurement lobbying limitations. HMOs are restricted from making contacts during the Procurement's "Restricted Period" (from the issuance of these Specifications until the date of the Contract's final approval by the NYS OSC) to other than designated staff of the Department and the Executive Branch of New York State government, unless the contact falls within certain statutory exceptions ("permissible contacts"). For purposes of this Section II.A.2 of the Specifications, HMO includes prospective HMOs prior to the due date for the submission of offers/bids (i.e., Submissions) in response to the solicitation document. Staff is required to obtain certain information from HMOs and others whenever there is a contact about the Procurement during the Restricted Period, and is required to make a determination of the HMO's responsibility that addresses the HMO's compliance with the statutes' requirements. Findings of non-responsibility result in rejection for contract award, and if an HMO is subject to two non-responsibility findings within four years the HMO also will be determined ineligible to submit a Proposal on or be awarded a contract

for four years from the date of the second non-responsibility finding. The Department's policy and associated procedures are included as **Exhibit I.L "Procurement Lobbying Policy: Restrictions on Contacts During the Procurement Process"** to these Specifications. Further information about these requirements can be found at: <http://www.ogs.state.ny.us/aboutOGS/regulations/defaultAdvisoryCouncil.html>

- b. In order to ensure public confidence and integrity in the Procurement process, the Department will strictly control all communications between any HMO and participants in the evaluation process from the date these Specifications are released until the contract is approved by OSC. HMO means any individual or entity, or any employee, agent, consultant, or person acting on behalf of such individual or entity, who contacts the Department or any other State governmental entity about a governmental procurement during that procurement's Restricted Period, whether or not the caller has a financial interest in the outcome of the governmental procurement; provided however, that a governmental agency (or its employees) that communicates with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an HMO. HMO includes prospective HMOs prior to the due date for the submission of applications in response to the solicitation document. All contacts and inquiries, questions, filings and submissions of Proposals in regard to the Specifications must be directed, in writing, by mail, facsimile or email, as applicable, solely to the HMO Procurement Manager, the Department's designated contact for this Procurement. An HMO's failure to comply with this requirement may result in the HMO's disqualification from this Procurement.

If using the U.S. Postal Service, please use the following address:

HMO Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

HMO Procurement Manager
Employee Benefits Division
NYS Department of Civil Service
Agency Building 1
Empire State Plaza
Albany, New York 12239

Email: HMO2016Specifications@cs.ny.gov

Additionally, any prospective HMOs and HMOs are strictly prohibited from making any contacts or inquiries concerning the Procurement with any member, officer or employee of any NYS governmental entity other than the Department from the date these Specifications are released until the contract is approved by OSC, subject only to the specific exceptions listed below. Further, any prospective HMO shall not attempt to influence the Procurement in any manner that would result in a violation or an attempted violation or an attempted violation of Public Officers Law §73(5) or §74.

- c. The following contacts are exempted from the provisions of paragraph 3 of section 139-j and as such do not need to be directed to the HMO Procurement Manager pursuant to section 139-k:
- (1) the submission of written Proposals in response to these Specifications;
 - (2) the submission of written questions by method set forth in these Specifications when all written questions and responses are to be distributed to all prospective HMOs who have expressed an interest in the Procurement;
 - (3) participation in a demonstration, conference or other means for exchange of information in a setting open to all prospective HMOs provided for in the solicitation;
 - (4) complaints by a prospective HMO regarding the failure of the HMO Procurement Manager to respond to an authorized contact, when such complaints are made in writing to the Department's Office of the General Counsel, provided that any such written complaints shall become a part of the Procurement record;
 - (5) communications by a successful HMO(s) who has been tentatively awarded a contract and is engaged in communications with Department solely for the purpose of negotiating the terms of the Contract after having been notified of tentative award;
 - (6) contact by an HMO to request the review of a Procurement award when done in accordance with the procedure specified in the solicitation document;
 - (a) contacts by an HMO in protests, appeals or other review proceedings (including the apparent successful HMOs and its representatives) before the Department seeking a final administrative determination, or in a subsequent judicial proceeding;
or

- (b) complaints of alleged improper conduct in the Procurement when such complaints are made to the NYS Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or
 - (c) written protests, appeals or complaints to NYS Comptroller's office during the process of contract approval, where the NYS Comptroller's approval is required provided that the NYS Comptroller shall make a record of such communications and any response thereto which shall be entered into the Procurement record pursuant to State Finance Law §163; or
 - (d) complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the NYS Comptroller's Office; and
- (7) communications between HMOs and governmental entities that solely address the determination of responsibility by a governmental entity by an HMO.
- d. It is **mandatory** that all prospective HMOs complete Part 1 of **Exhibit I.K, "Procurement Lobbying Offeror's Affirmation of Understanding and Agreement"** affirming their understanding of, and agreement to comply with the procurement lobbying requirements set forth in State Finance Law §139-k and §139-j. A completed **Exhibit I.K** shall be submitted to the HMO Procurement Manager **prior to a prospective HMO making its initial contact with the Department** (e.g., submission of Notice of Intent to Apply (Exhibit I.J, submission of questions, etc., or concurrent with an HMO's submission, whichever shall occur first). HMOs are advised that whenever any of the HMO's officers, employees, agents or consultants contacts the Department, they should be prepared to provide their name, address, telephone number, place of principal employment, occupation, and whether they were retained, employed or designated, by or on behalf of the HMO to appear before or contact the Department in regards to this Procurement. To that end and to streamline the process, HMOs are requested to complete and submit Part 2 of Exhibit I.K entitled, "HMO Designated Contact."

Additionally, at the time a Submission is submitted to the Department, the HMO is required to provide a completed Certification of Compliance Pursuant to State Finance Law §139-k. This certification is included as **Exhibit I.P** of these Specifications.

3. Notice of Intent

Filing of this Notice of Intent is required of an HMO who intends to submit a Proposal since the Department must collaborate with the HMO in order for it to gain access to a secure online data interface (HMO ePage) to complete a Choices Page. For more detailed information on the Choices Guide see Section IV.D.3 of these Specifications. The Notice of Intent will also assist the Department in better managing the Procurement process, thus prospective HMOs, whether they intend to submit a Proposal or not, are requested to complete a “**Notice of Intent Form**” (**Exhibit I.J**) and submit it to the HMO Procurement Manager by the Notice of Intent Deadline as set forth in Section II.A.1. The completed form may be submitted either in hardcopy, at the address provided in Section II.A.2.b. of these Specifications or electronically at: HMO2016Specifications@cs.ny.gov.

On the Notice of Intent Form, New York State certified Minority and Women- Owned Businesses (M/WBE) may request that their firm’s contact information be included on a list of M/WBE firms interested in serving as a subcontractor for these Specifications. The listing will be publicly posted on the Procurement webpage at: www.cs.ny.gov/HMO2016Specifications/index.cfm for reference by the bidding community. A firm requesting inclusion on this list should send a copy of its NYS M/WBE certification with its completed Notice of Intent Form. Nothing prohibits an M/WBE vendor from proposing as a prime contractor.

4. Notice of Incomplete or Non-Compliant Submission

The HMO’s Submission will be reviewed by the Department and the JLMC for completeness and compliance with the Specifications. If deficiencies are noted, the Department, in consultation with the JLMC, may return the Submission in its entirety to the HMO along with a brief description of the deficiency and a due date for submission of a corrected Submission. The Department in consultation with the JLMC may suspend further review of an HMO’s Submission until such time as the HMO returns a corrected Submission. Submissions deemed by the Department in consultation with the JLMC to contain substantial deficiencies may be removed from further consideration for participation in the NYSHIP for the period covered by these Specifications. Therefore, it is in the best interest of the HMO to ensure that Submissions are complete and in accordance with these Specifications.

5. Submission of Errors or Omissions in the Solicitation Document

By participating in activities related to this Procurement, and/or by submitting a Submission in response to these Specifications, prospective HMOs agree to be bound by its terms, including, but not limited to, this process by which a prospective HMO may submit errors or omissions for consideration. In the event that a prospective HMO believes there is an error or omission in the Specifications, the prospective HMO may raise such issue according to the following provisions:

a. Process for Submitting Assertions of Errors or Omissions in Specifications

- (1) **Time Frame:** Assertions of errors or omissions in the procurement process which are or should have been apparent prior to the Submission Due Date must be received by the Department, in writing, five (5) Business Days after the Release Date of Official Responses to Questions specified in Section II.A.1.
- (2) **Content:** The submission alleging the error or omission must clearly and fully state the legal and/or factual grounds for the assertion and must include all relevant documentation
- (3) **Format of Submission:** All submissions asserting an error or omission must be in writing and submitted to the Banking Services Procurement Manager at the following address:

If using the U.S. Postal Service, please use the following address:

HMO Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

HMO Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

The envelope or package must clearly and prominently display the following statement:

**"Submission of Errors or Omissions for the
2016 HMO Specifications for the
New York Health Insurance Program**

Any assertion of an error or omission which does not conform to the requirements set forth in this section shall be deemed waived by the prospective Offeror and the prospective Offeror shall have no further recourse.

b. The Review Process for Assertions of Errors or Omissions in Specifications

The Department shall conduct the review process for submission of errors or omissions. The Commissioner may appoint a designee who will review the submission and make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of these Specifications, the evaluation of Submissions, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the prospective Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee, as the case may be, to support its submission. The prospective Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) business days after the close of the review process. If additional time for the issuance of the decision is necessary, the prospective Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

The Department reserves the right to determine and to act in the best interests of the State in resolving any assertion of error or omission in the Specification document. As a consequence of reviewing the assertion, the Department may elect to extend the Submission Due Date as may be appropriate. Notice of any such extension will be provided to all organizations who registered via mail, facsimile or e-mail. Notice of any extension will also be posted to: www.cs.ny.gov/HMO2016Specifications/index.cfm

6. Submission of Questions

In the event a prospective HMO has any substantive or procedural questions concerning the content of the Specifications document, those questions can be submitted in the following manner to:

If using the U.S. Postal Service, please use the following address:

HMO Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

HMO Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

Email: HMO2016Specifications@cs.ny.gov

Prospective HMOs may submit questions to the HMO Procurement Manager, in writing, via e-mail, facsimile or mail. The Department strongly urges prospective HMOs to submit the questions via e-mail. Each question should cite the particular Specification section, page number and paragraph number to which it refers. All responses will be considered unofficial until issued or confirmed in writing by the Department on the Procurement website. Only those questions submitted prior to 5:00 p.m. Eastern Time (ET), on the Questions Due Date as shown in Section II.A.1. of the Specifications, may be accepted.

To expedite its responses, the Department has provided a question template form which prospective HMOs are requested to use in submitting questions regarding the Specifications (see [Exhibit I.R] "Question Template").

After the Questions Due Date, the Department will provide to all organizations who have registered, e-mail notification of the posting of all questions received and the Department's Official Responses to said questions. The aforementioned information will be posted to: www.cs.ny.gov/HMO2016Specifications/index.cfm and all registered potential HMOs will be notified of the posting to this site.

Amended May 12, 2015

7. Submission Requirements

Each HMO responding to these Specifications must submit ~~one~~ **two** (2) Original hard copies **and** one (1) electronic copy (CD). The electronic submission must be prepared in a searchable PDF format.

The Original must be marked "ORIGINAL" and contain original signatures of an official(s) authorized to bind the HMO to its provision on all forms submitted that require the HMO's signature **and should be marked Original #1 and Original #2**. Electronic signatures are not acceptable. ~~The additional hard copy should be marked "COPY".~~ Please note that hard copy marked "ORIGINAL #1" will be deemed controlling by the Department when viewing the Submission.

Submissions should be placed in sealed boxes/envelopes. Each sealed box/envelope should contain a label on the outside of the container which contains the information below:

<p style="text-align: center;">New York State Department of Civil Service</p> <p style="text-align: center;">2016 HMO Submission for the New York State Health Insurance Program</p> <p style="text-align: center;">HMO Name HMO Address</p>

All Submissions must be sent to the following:

If using the U.S. Postal Service, please use the following address:

HMO Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

HMO Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

For those HMOs who plan to have the Submission hand delivered, arrangements for acceptance of the packages must be made in accordance with Procurement security procedures. **To make such arrangements, the Department requests that the HMO notify**

the HMO Program Procurement Manager forty-eight (48) hours prior to delivery. All Submissions must be received by 3:00 p.m. ET on the Submission Due Date as set forth in Section II.A.1 of these Specifications. No exceptions will be made for late submission or delays in delivery of the Submission. If the Submission is delivered by mail or courier, the Department recommends that it be sent "return receipt requested," so the HMO obtains proof of timely delivery.

All Submissions become the property of the Department. Any Submission received after 3:00 p.m. ET on the Submission Due Date will not be accepted by the Department and may be returned to the submitting entity at the Department's discretion.

A **copy** of the Submission should be sent to **all** JLMC Contact Members listed in **Exhibit II.B** of these Specifications. Submissions must be received by all JLMC Contact Members no later than 3:00 P.M. ET on the Submission Due Date set forth in Section II A.1.

The Department will accept amendments and/or additions to an HMO's Submission if the amendments and/or additions are received by the Department **prior** to 3:00 P.M. ET on the Submission Due Date. All amendments to an HMO's Submission must be submitted in writing, in accordance with the format set forth in Section II.A.7.(6) of these Specifications, and will be included as part of the HMO's Submission, if accepted by the Department as provided above.

HMOs are cautioned to verify the content of their Submission before it's submitted. Except for material received from an HMO in response to a request by the Department, the Department will not accept amendments or additions to a Submission if such material is received after 3:00 P.M. ET on the Submission Due Date. HMOs are encouraged to submit the Submission Requirement Checklist (**Exhibit I.A**) to facilitate verification of Submission contents. An HMO's request to withdraw a Submission after the Submission Due Date may be considered at the sole discretion of the Department.

Formatting Requirements

The Submission must comply with the following formatting requirements (Failure to comply with the formatting requirements herein below may, but will not necessarily, result in the Submission being deemed non-responsive and may, but will not necessarily, result in rejection of the Submission):

- (1) **Binding of Submission:** Each HMO must submit its Original hard copy Submission so that any new/replacement pages required by the Department can be easily incorporated into the original Submission. The official name of the organization, the Submission Due Date, and “2016 HMO Submission” must appear on the outside front cover of the HMO's bound Submission. If the Submission is submitted in loose-leaf binders, official name of the organization and “2016 HMO Submission” also must appear on the spine of the binder.

Each HMO must submit its electronic copy on a CD. The official name of the organization must appear on both the CD and its plastic cover case. Electronic documents must be prepared in a searchable PDF format.

- (2) **Table of Contents:** The Submission must include a table of contents;
- (3) **Index Tabs:** Each major section of the Submission and each Exhibit must be labeled with an index tab that completely identifies the title of the Section or Exhibit as named in the table of contents.
- (4) **Pagination:** Each page of the Submission, including Exhibits, must be labeled on the upper right with the Section title and Section reference, page number, and date. Pages must be numbered consecutively. Each page must also be labeled with the name of the HMO.
- (5) **Exhibits:** Each exhibit should be a separate searchable PDF document. Each Certificate of Insurance or Rider should be a separate searchable PDF document. All electronic documents should be clearly labeled with the specific corresponding title.
- (6) **Submission Updates/Corrections:** HMOs must present their Submissions so that any update pages required by the Department can be easily incorporated into the Submission. Should it be necessary for an HMO to submit additional information in support of its Submission, it must be submitted in accordance with the following: upon written notification by the HMO and agreement by the JLMC, new or replacement pages may be placed in the Submission. All new or replacement pages will show the date of the revision and indicate the portion of the page being changed. This latter requirement will be fulfilled by drawing vertical lines down both margins of all affected passages. All new/replacement pages will be noted by the Department on an errata sheet to be placed at the front of the Submission.

The PDF version of the replacement pages must be named in the same manner described above, and also be in a searchable PDF format. The date of revised Submission is the date that should be inserted on the revised pages.

8. Future Years

HMOs selected for participation in the NYSHIP for 2016 may continue participation in NYSHIP in 2017 through and including 2020, at the discretion of the Department, in consultation with the JLMC. Acceptance by the Department and JLMC for participation in 2016 is not a guarantee that the Department will approve an HMO's continued participation in NYSHIP in 2017 or beyond. Upon acceptance for participation in NYSHIP in 2016, an HMO must, on an annual basis submit documentation, referred to as the "Required Annual Submission," to the JLMC for the Committee's review and approval. Participating HMOs will be advised by written correspondence of the Required Annual Submission.

The HMO's continued participation in NYSHIP for each year subsequent to 2016 is contingent upon review and approval of the following documents by the Department and the JLMC. The Required Annual Submission documents will include, but are not limited to:

- a. New York State (NYS) Department of Health Certification for HMOs to operate within an approved Service Area and the ability to provide comprehensive hospital, medical and prescription drug benefits for covered Enrollees
- b. Current HMO status based on the National Committee on Quality Assurance (NCQA)
- c. Key Subcontractors listing
- d. Service Area expansion requests
- e. Submission to offer or discontinue a Medicare Advantage product
- f. Most recent annual filing of Schedule M (Complaints)
- g. Coverage and benefit documents, including but not limited to:
 - Enrollee Certificate of Coverage
 - MAP Evidence of Coverage
 - Choices - HMO e-page
 - Schedule of Benefits

- Side by Side comparison of changes in benefits from 20XX (current year) to 20XX (upcoming year)
- Coverage Riders and Addendums
- Annual communication materials to Enrollees
- Summary of Benefits and Coverage
- Other Required Submission Material

At the discretion of the Department and the JLMC, the Required Annual Submission documents may be amended. The Department will notify the HMO in writing of such changes no later than thirty (30) days prior to the requested due date of the Required Annual Submission.

As a Periodic Recruitment, the Department and JLMC reserve the right to consider additional HMOs starting on the one year anniversary of the award start date or at any time deemed to be in the best interests of the State, as determined by the Department. Such HMOs shall be required to submit an original Submission document and, where applicable, Submissions shall be evaluated under the original Specifications requirements. An addendum containing additional applicable statutory requirements currently in effect at the time of the Periodic Recruitment may be added to the recruitment. The Department is not required to award on offers under Periodic Recruitment.

Upon receipt of the written Submission from a qualified HMO, the Department in consultation with the JLMC shall evaluate the Submission under the same terms and conditions as original bid submissions and any amendments that may have been issued. If accepted, a contract(s) shall be awarded for the remaining term of the initial agreement. Once awarded a contract(s), HMOs need not resubmit a Submission for continued participation in NYSHIP for the remainder of the contract term but must apply for continuation through the Required Annual Submission process.

9. Submission Evaluation

The Department and JLMC members listed in Exhibit II.B, and their staff will evaluate Submissions. The evaluation will include, but not be limited to, assessment of the Submission against the Specifications, comparison of the Submission to other plans offered, and assessment of the needs of the Employee population in the HMO's Service Area. During the evaluation process, the Department, in consultation with the JLMC may require clarification

information from an HMO for the purpose of assuring the Department's full understanding of the HMO's responsiveness to the Specifications requirements. Any request for clarification must be responded to in writing by the HMO in accordance with formats set forth in Section II A.7.(6) of the Specifications and be received by the due date specified by the Department. Failure to provide the required information by said due date may result in rejection of an HMO's Submission. Nothing in the foregoing shall mean or imply that it is obligatory upon the Department to seek or allow clarifications as provided herein. The Department in consultation with the JLMC reserves the right to request interviews with HMO executives as part of the evaluation process.

10. Notice of Approval/Disapproval of Submission

The Department will notify HMOs of their approval or disapproval in accordance with Exhibit II.A - Time Line of Key Events - of these Specifications.

Although the offering of HMOs to the State's non-represented Employees and Retirees does not require collective bargaining, it is preferable to offer the same HMOs to the unrepresented and Retiree population in the interests of uniformity and efficiency in marketing and administration.

No public discussion or news releases relating to the Specifications, the associated Procurement process, including but not limited to the bid solicitation, Submission evaluation and award and contract processes or the Agreement shall be made by any HMO or their agent without the prior written approval of the Department.

11. Debriefing

As stated in, Section II.A.10 above, approval or disapproval letters will be sent to the HMOs. At that time, HMOs will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made, dependent upon the nature of the Debriefing, i.e., pre-award or post-award. Debriefings are subject to the Department's Debriefing Guidelines which are set forth in **Exhibit I.H.** entitled, "NYS Department of Civil Service Debriefing Guidelines."

An unsuccessful HMO's written request for a debriefing shall be submitted to:

If using the U.S. Postal Service, please use the following address:

HMO Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service

Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

HMO Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239
Fax: 518-473-3292
E-Mail: HMO2016Specifications@cs.ny.gov

12. Submission of Award Protests

By participating in activities related to this Procurement, and/or by submitting a Submission in response to these Specifications, all HMOs agree to be bound by its terms including, but not limited to, the process by which an HMO may submit protests of the selection award for consideration. In the event that an HMO decides to protest the selection decision, the HMO may raise such issue according to the following provisions.

a. Process for Submitting Post Award Protests of the Selection Decision

- (1) **Time Frame:** Any protest of the selection decision must be received no later than ten (10) Business Days after an HMO's receipt of written notification by the Department of a conditional award.
- (2) **Content:** The submission of the protest must clearly and fully state the legal and/or factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** All submissions of protest must be in writing and submitted to the HMO Procurement Manager at the following address:

If using the U.S. Postal Service, please use the following address:

HMO Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

HMO Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza

Albany NY 12239

A protest of the selection decision must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Selection Protest for
2016 HMO Specifications for the
New York State Health Insurance Program”**

Any assertion of protest which does not conform to the requirements set forth in this section shall be deemed waived by the HMO, and the HMO shall have no further recourse.

b. **Review of Submitted Protests**

The Department shall conduct the review process of submitted protests. The Department's Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of these Specifications, the evaluation of Submissions, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the HMO may be given the opportunity to meet with the Commissioner or her designee, as the case may be, to support its submission. The HMO may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee. The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) business days after the close of the review process. If additional time for the issuance of the decision is necessary, the HMO shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the Department's final determination in the matter.

In the event that an HMO protests the selection decision, the Department shall continue contract negotiations regarding the terms and conditions of the agreement with the selected HMO(s) pending the outcome of the protest. Any HMO whose Submission might become eligible for a conditional award in the event that the intended selection is

disqualified may be asked to extend the time for which their Submission shall remain valid.

The Department reserves the right to determine and to act in the best interests of the State in resolving any post award selection protest.

13. The Department of Civil Service Reservation of Rights

In addition to any rights articulated elsewhere in these Specifications, the Department reserves the right to:

- a. Make or not make an award(s) under the Specifications in whole or in part;
- b. Prior to the bid opening, amend the Specifications. If the Department elects to amend any part of the Specifications, notification of the amendment will be provided to all organizations who submitted a Procurement Registration Form and/or a Procurement Lobbying Offeror's Affirmation of Understanding and Agreement (Exhibit I.K) via e-mail, facsimile or mail. Any amendments will also be posted to: www.cs.ny.gov/HMO2016Specifications/index.cfm;
- c. Prior to the submission opening, direct HMOs to submit modifications addressing subsequent Specifications amendments;
- d. Withdraw the Specifications, at any time, in whole or in part, at the Department's sole discretion, prior to OSC approval of award of the contract(s);
- e. Waive any requirements that are not material;
- f. Disqualify any HMO whose conduct and/or Submission fails to conform to any mandatory requirements of the Specifications;
- g. Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an HMO's Submission and/or to determine an HMO's compliance with the requirements of the Specifications;
- h. Reject any or all Submissions received in response to the Specifications, at its sole discretion;

- i. Change any of the scheduled dates stated in the Specifications;
- 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 HMO;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective HMOs;
- m. For the purposes of ensuring completeness and comparability of the Proposals, analyze Submissions and make adjustments or normalize Submissions in the Proposal(s), including the HMO's technical assumptions, and underlying calculations and assumptions used to support the HMO's computation of costs, or to apply such other methods it deems necessary to make level comparisons across Proposals;
- n. Use the Proposal, information obtained through any site visits, management interviews, and the Department's own investigation of an HMO's qualifications, experience, ability or financial standing, and any other material or information submitted by the HMO in response to the Department's request for clarifying information, if any, in the course of evaluation and selection under the Specifications;
- o. Negotiate with the successful HMO(s) within the scope of the Specifications in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Proposal(s) received;
- q. Set aside the conditional award to the selected HMO(s) should the Department be unsuccessful in negotiating an agreement with that HMO within a time frame acceptable to the Department; such time frame is to be determined solely by the Department based on the best interest of the Department and the State; and
- r. Unless otherwise specified in the Specifications, every offer is firm and not revocable for a minimum period of 365 days from the Submission Due Date as set forth in the Specifications.

14. Limitation of Liability

The Department is not liable for any cost incurred by any HMO prior to approval of the Agreement by OSC. Additionally, no cost will be incurred by the Department for any prospective HMO or HMO's participation in any Procurement-related activities.

The Department has taken care in preparing the data accompanying these Specifications (hardcopy exhibits, website exhibits and sample document exhibits). However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in hardcopy exhibits, website exhibits, and sample document exhibits referenced throughout these Specifications are for informational purposes only and should not be used or viewed by prospective HMOs as guarantees or representations of any levels of past or future performance or participation. Accordingly, prospective HMOs should rely upon and use such numbers or statistics in preparing their Submissions at their own discretion.

B. COMPLIANCE WITH APPLICABLE RULES, LAWS, REGULATIONS & EXECUTIVE ORDERS

This Procurement is governed by, at a minimum, the legal authorities referenced below. All HMOs must fully comply with the provisions set forth in this Section II.B of these Specifications. The Department in consultation with the JLMC will consider for evaluation and selection purposes only those HMOs who agree to comply with these provisions whose Submission contains the Statements, Formal Certifications and Exhibits submissions required hereunder.

1. Public Officers Law

All HMOs, HMO employees and agents shall be aware of and comply with the requirements of the New York State Public Officers Law ("POL"), particularly POL Sections 73 and 74, as well as all other provisions of New York State law, rules and regulations, and policy establishing ethical standards for current and former NYS Employees. In signing its Submission, each HMO guarantees knowledge and full compliance with such provisions for purposes of these Specifications and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the HMO selection process, termination, suspension or cancellation of the Agreement and criminal proceedings as may be required by law. Per Specification Section III.C, HMOs must submit an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the HMO because of prior, current, or proposed contracts,

engagements, or affiliations by submitting a completed **Exhibit I.M, “Compliance with Public Officers Law Requirements”**, with its Submission.

2. Omnibus Procurement Act of 1994 and its 2000 Amendment

HMOs are hereby notified that, if their principal place of business is located in a foreign or domestic jurisdiction that penalizes New York State vendors, and if the goods or services they offer would be produced or performed substantially outside New York State, the Omnibus Procurement Act of 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain.

The list of jurisdictions subject to this provision is set forth in Article 20 of Appendix A.

3. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145 the Department recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of the Department contracts.

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

other things, that the Department establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Department hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises (“MBE”) participation and 15% for New York State certified women-owned business enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs and applied only to the administrative component of HMO premiums). A contractor (“Contractor”) on the subject contract (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that the Department may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

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

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

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting the Department. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements

please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

Additionally, a Bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan – Form MWBE-100 (**Exhibit I.O**) with their bid or Proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department.

The Department will review the submitted MWBE Utilization Plan and advise the Bidder of the Department’s acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form MWBE-101 entitled “Request for Waiver Form” available at: <http://www.cs.ny.gov/pio/mwbe-eeo-forms.cfm>. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.

The Department may disqualify a Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If the Department determines that the Bidder has failed to document good faith efforts.

The Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Department, but must be made no later than prior to the submission of a request for final payment on the Contract.

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the Department, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract. Form MWBE-103 is available at:

<http://www.cs.ny.gov/pio/mwbe-eeo-forms.cfm>.

Equal Employment Opportunity Requirements

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

The Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement (**Exhibit I.Q**), to the Department with their proposal.

To ensure compliance with this Section, the Bidder will be required to submit with its proposal an Equal Employment Opportunity Staffing Plan - Form EEO-100 (**Exhibit I.G**) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting the Department.

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

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

Per Specifications Section III.C, executed copies of:

Exhibit I.G entitled “EEO Staffing Plan (form EEO-100),”

Exhibit I.O entitled, “MWBE Utilization Plan (form MWBE-100),” and

Exhibit I.Q entitled, “Minority and Women-Owned Business Enterprises & Equal Employment Opportunity Policy Statement,”

must be submitted as part of the HMO’s Submission.

4. **Americans With Disabilities Act**

The Contractor will be required to assure its compliance with the Americans With Disabilities Act (42 USC§12101 et. seq.), in that any services and programs provided during the course of performance of the Agreement shall be accessible under Title II of the Americans With Disabilities Act, and as otherwise may be required under the Americans With Disabilities Act by submitting a completed “**Compliance with Americans with Disabilities Act**” form (**Exhibit I.N**) with its Submission.

5. **MacBride Fair Employment Principles Act & Non-Collusive Bidding Certification**

In accordance with Chapter 807 of the Laws of 1992, HMOs must certify whether they or any individual or legal entity in which the HMO holds a ten percent (10%) or greater ownership interest, or any individual or legal entity that holds a ten percent (10%) or greater ownership in the HMO have business operations in Northern Ireland. If an HMO does have business operations in Northern Ireland, they shall certify that they are taking lawful steps in good faith

to conduct such business operations in accordance with the MacBride Fair Employment Opportunity Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such principles.

The Department also requires that HMOs certify that prices in their Submission have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition with any other HMO or competitor. In addition, that unless required by law, the prices quoted in the HMO's Submission have not been knowingly disclosed by the HMO and will not knowingly be disclosed by the HMO prior to opening, directly, indirectly, to any other HMO or to any competitor. HMOs must also certify that no attempt has been made or will be made by the HMO to induce any person, partnership or corporation to submit or not to submit a Submission for the purpose of restricting competition. An executed copy of the combined MacBride Act statement form and Non-Collusive Bidding Certification (**Exhibit I.D**) is required to be submitted with the HMO's Submission.

6. Vendor Responsibility Requirements – State Finance Law § 163

New York State Finance Law §163 requires contracts for services and commodities be awarded “to a responsive and responsible HMO.” Furthermore, §163(9)f requires the Department to make a determination of responsibility of the proposed contractor prior to making an award.

To assist the Department in evaluating the responsibility of HMOs, a completed “**New York State Standard Vendor Responsibility Questionnaire**” must be submitted in the HMO's Submission. A person legally authorized to represent the HMO must execute the questionnaire. To the extent that the Contractor is proposing the use of Key Subcontractors or Affiliates (i.e., part of the HMO's proposed Account Team) and expected to receive more than \$100,000 in payments during the term of the Agreement, the HMO must submit a completed “New York State Standard Vendor Responsibility Questionnaire” for each Key Subcontractor or Affiliate completed by a person legally authorized to represent the Key Subcontractor or Affiliate.

The Department recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System; however, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State

VendRep System, see the VendRep System Instructions available at:

http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at: <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at:

itservicedesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form.

7. Tax Law Section 5-a Certification Regarding Sales and Compensating Use Taxes

Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a NYS agency shall not be valid, effective, or binding against the agency unless the Contractor certifies to the Tax Department that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Tax Department that each Affiliate and Key Subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means 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. The Contractor also must certify to the procuring state entity that it filed the certification with the Tax Department and that the certification is correct and complete. Accordingly, in the event the value of this Contract exceeds \$100,000, the Contractor must file a properly completed ST-220-CA (**Exhibit I.E**) with the Department and a properly completed Form ST-220-TD (**Exhibit I.F**) with the Department of Taxation & Finance before the Contract may take effect. In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Agreement's term is renewed. Further, a new Form ST-

220-TD must be filed with the Department of Taxation & Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

Submission of these forms (ST-220-CA and ST-220-TD) is not required at time of Proposal submission; however, the selected HMO will be required to complete and submit these forms as a condition of contract award. These forms may also be found at:

www.tax.state.ny.us/forms/sales_cur_forms.htm

**8. Disclosure of Submission Contents – Freedom of Information Law (FOIL)
NOTICE TO HMO’S LEGAL COUNSEL**

All materials submitted by an HMO in response to these Specifications shall become the property of the Department and may be returned to the HMO at the sole discretion of the Department. Submissions may be reviewed by any person, other than one associated with a competing HMO, designated by the Department. HMOs may anticipate that Submissions will be reviewed by staff and consultants retained by the Department, the JLMC, and may also be reviewed by staff of other NYS agencies interested in the provision of the subject services, including but not limited to the Governor's Office of Employee Relations, and the Division of the Budget unless otherwise expressly indicated in these Specifications. Representatives of affected collective bargaining units also will be allowed to review HMO Submissions. The Department in consultation with the JLMC has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to the Specifications.

To request that materials be protected from FOIL disclosure, the HMO must follow the procedures below regarding the New York State Freedom of Information Law (FOIL). If an HMO believes that any information in its Submission or supplemental submission(s) constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the HMO must make that assertion by completing **Exhibit I.C “Freedom of Information Law – Request for Redaction Chart”**. The HMO 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 Exhibit I.C contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific,

summary allegations that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed Exhibit I.C must be submitted to the Department at the time of its Submission; it should be included with the Requested Redactions (CD and Hardcopy), described below. It should not be included with the HMO's Submission. If the HMO chooses not to assert that any Submission material and/or supplemental submission should be protected from FOIL disclosure, the HMO should so advise the Department by checking the applicable box on **Exhibit I.C** and submitting it to the Department at the time of its submission, but separately from its Submission. If a completed **Exhibit I.C** form is not submitted, the Department will assume that the HMO chooses not to assert that any Submission material or supplemental submission, as applicable should be protected from FOIL disclosure.

The FOIL-related materials described herein will not be considered part of the HMO's Submission and will not be reviewed as a part of the Procurement's evaluation process.

Requested Redactions (CD and Hard Copy):

At the time of submission, the HMO is required to identify the portions of its Submission that it is requesting to be redacted, in accordance with the instructions below, to be used in the event that its submission is the subject of a Freedom of Information Law (FOIL) request received by the Department:

The HMO must provide an electronic copy of the HMO Submission on a separate CD, which reflects the HMO's requested redactions. Additionally, the HMO must provide a separately bound hardcopy of HMO Submission documents with redactions marked that are included on the CDs. The electronic documents must be prepared in PDF format using the Redaction Function in Adobe Acrobat Professional software, version 8 or higher. 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.** The resulting documents must show the HMO'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 CD and in hardcopy must be complete Submissions, including all Exhibits and Attachments. No section may be omitted from the CD or hard copy even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, exhibits and

charts please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page.

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

9. Compliance with New York State Workers' Compensation Law

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Department shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the Department, selected HMOs and Key Subcontractor(s) or Affiliates, with more than \$100,000 in expected expenses over the life of the contract, if any, will be required to verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed in **Exhibit I.W** - Compliance With NYS Workers' Compensation Law. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518)486-6307. HMOs may also find useful information at their website <http://www.wcb.ny.gov>.

Submission of the proof of HMOs will be required to provide this documentation before execution of the Contract or Contract Amendment as set forth in **Exhibit II.A** Time Line of Key Events – of these Specifications. Failure to provide verification of either of these types of insurance coverage by the time the HMOs are selected to participate in NYSHIP and the Contract or Contract Amendment is ready to be executed will be grounds for disqualification of an otherwise successful Submission.

10. Iran Divestment Act

By submitting a Submission in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, HMO/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/HMOs Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, HMO/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

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

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

11. New York Subcontractors and Suppliers

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

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

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

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects HMOs to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers. HMOs are required to complete **Exhibit I.U.2**, NYS Subcontractors and Supplies.

12. **Not for Profit Organizations**

Article 7-a of the Executive Law requires, with certain exemptions, that charitable organizations shall register with the Office of the Attorney General. In addition, the Estates, Powers and Trusts Law (EPTL) Section 8-1.4(s) requires that a charitable organization "shall not be qualified to make application for funds or grants or to receive such funds from any department or agency of the state without certifying compliance with" all applicable registration and filing requirements.

Section 172-a of the Executive Law and Section 8.14 of the EPTL enumerate certain entities which are exempt from the registration requirements. These entities are listed on the Office of the Attorney General's Request for Registration Exemption (Schedule E).

HMOs (charitable organizations) that are not for profit entities shall provide a statement that the organization is exempt pursuant to one of the categories indicated on the Office of Attorney General's Request for Registration Exemption (Schedule E). The statement shall identify the specific category under which the charitable organization is exempt, and **be submitted with the vendor responsibility documents**.