



**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
EMPLOYEE BENEFITS DIVISION**



**REQUEST FOR PROPOSALS**

**Entitled**

**“DISPUTE RESOLUTION PROGRAM”**

**RELEASE DATE: March 10, 2005**

**PROPOSAL DUE DATE: April 29, 2005**

**Proposals to be submitted to:**

Mr. Robert W. DuBois, CEBS  
Director, Employee Benefits Division  
Attn: Stefanie Cassier  
New York State Department of Civil Service  
W. Averell Harriman State Office Building Campus  
Building 1, Room 154  
Albany, New York 12239  
(518) 457-9391

**For additional information, please contact:**

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## **SECTION I: INTRODUCTION**

### **A. Purpose**

The purpose of this Request for Proposals (RFP) entitled, Workers' Compensation "**DISPUTE RESOLUTION PROGRAM**" (DRP), is to secure a qualified organization to review conflicting medical opinions (Appeals) regarding an Employee's degree of disability. Such Appeals must be made on behalf of the eligible Employee by the Employee's Treating Physician. Review of such Appeals may include, but is not limited to, the following services: reviewing medical documentation and supporting information from the eligible Employee's Treating Physician and Evaluating Physician; issuing a decision in support of the medical opinion of the Treating Physician or Evaluating Physician; communicating the results of the Appeal to identified parties; and maintaining in a confidential and secure manner, the required documentation and records used by the reviewing organization in issuing its decision.

It is the Department of Civil Service's (DCS's) intent to enter into an Agreement with the Offeror selected as a result of this RFP for the period November 1, 2005 through October 31, 2010, under which the selected Offeror shall be responsible for performing the required DRP services in accordance with the specifications in this RFP.

### **B. Workers' Compensation Dispute Resolution Program Overview**

The Dispute Resolution Program (DRP) is a process agreed to by New York State (NYS) and several unions representing certain state employees to obtain an independent third party review of medical opinions and related records to resolve disagreements regarding degree of disability for injured employees in order to determine an injured employee's ability to return to work. Currently, there are two groups of NYS employees that participate in the DRP program:

**Group 1:** Employees belonging to the Security Services Unit, Security Supervisors Unit, and Agency Law Enforcement Services Unit.

**Group 2:** Employees of the State Police in the State Police Investigators Unit, State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit, and the State Police Management/Confidential Group.

Although both groups participate in the DRP, the rules that govern the program are different for each group and are specified in the RFP. In addition, Group 1 only includes work-related disability reviews, while Group 2 includes both work-related and non-work related (i.e., ordinary disability) reviews.

The DRP as designed for each group is described in further detail in Section I.D of the RFP as well as in the materials included in Exhibits II.A-G. The DRP is currently administered by Island Peer Review Organization, Inc. (IPRO), a third party health care evaluation firm.

Numbers or statistics that may appear in this RFP and related Exhibits are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of future performance or participation.

### **C. Definitions of Terms**

**Appeal** means a request, with required supporting documentation from an Employee's Treating Physician to the Contractor selected as a result of this procurement process, for review of conflicting medical opinions regarding an Employee's degree of disability.

#### **Appeal Period for Security Services, Security Supervisors and Agency Law**

**Enforcement Services Units' Employees** means three (3) Business Days from the day the Employing Agency notifies the Employee to return to work based on the Evaluating Physician's determination. If the Employee's notification to return to work occurs prior to noon, that day is the first day of the Appeal period. If such notification occurs at noon, after noon or on a non-Business Day, the next Business Day is the first day of the Appeal period.

#### **Appeal Period for State Police Supervisors' and Bureau of Criminal Investigators'**

**Units and Management/Confidential Group** means fifteen (15) Business Days from the day the Employing Agency notifies the Employee to return to work based on the Evaluating Physician's determination. If the Employee's notification to return to work occurs prior to noon, that day is the first day of the Appeal period. If such notification occurs at noon, after noon or on a non-Business Day, the next Business Day is the first day of the Appeal period.

**Appeal Request Form** means a form designed by the selected Offeror and approved by the DCS, which must be used by the Treating Physician to file an Appeal and, when

properly completed, provides sufficient information for the Contractor to perform a Program Review.

**Board** means the Workers' Compensation Board, which is the State agency responsible for interpreting the Workers' Compensation Law and making final determinations on the occupational nature of an employee's injuries and the amount of associated indemnity benefits.

**Business Days** means every Monday through Friday, except for those days which have been designated as business holidays by the selected Offeror and approved as such by DCS prior to each January 1<sup>st</sup>.

**Confidential Information (CI)** means any information, including demographic information collected from an Employee, that relates to the past, present or future physical or mental health or condition of an Employee, to the provision of medical or related health care to an Employee, that identifies the Employee, or with respect to which there is a reasonable basis to believe that the information can be used to identify the Employee.

**Contractor** means the Offeror selected as a result of this RFP and resultant procurement process to provide the required Worker's Compensation Dispute Resolution Program (DRP) medical review services.

**Days** means Calendar Days unless otherwise noted.

**DCS** means the New York State Department of Civil Service.

**Dispute Resolution Program (DRP)** means the New York State program that provides covered Employees an opportunity for a neutral third party medical review of conflicting medical opinions (Appeals) regarding an Employee's degree of disability.

**Employee** means a person who is appointed to one of the Employing Agencies delineated in Section I of the RFP, who is in a position contained within the: Security Services Unit (represented by NYSCOPBA), Security Supervisors Unit (represented by Council 82, AFSCME, AFL-CIO), or the Agency Law Enforcement Services Unit (represented by Council 82, AFSCME, AFL-CIO). Employee also means a person who is appointed as a Member of the Division of New York State Police who is in a position contained within the

State Police Investigators Unit [represented by the NYS Police Investigators Association, (NYSPIA), Local 4, I.U.P.A., AFL-CIO], the State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)], or who is designated Management/Confidential.

**Employing Agency** means one of the organizational entities of the State of New York as described in Section I of the RFP, which employs persons eligible to participate in the DRP.

**ET** means prevailing Eastern Time.

**Evaluating Physician** means the medical consultant employed by the State Insurance Fund (Evaluating Physician) who determines the Employee's degree of disability, upon which management decides if the Employee should return to work in light or full duty capacity and/or the physician employed by the Division of New York State Police (Staff Physician) who determines the Employee's degree of disability, upon which management decides if the Employee should return to work in light or full duty capacity.

**Fund** means the State Insurance Fund, the State agency that acts as the State's workers' compensation insurance carrier.

**Labor Agreement(s)** means the negotiated collective bargaining agreements between the State and the Security Services Unit (represented by NYSCOPBA), and the Security Supervisors Unit (represented by Council 82, AFSCME, AFL-CIO), and the Agency Law Enforcement Services Unit (represented by Council 82, AFSCME, AFL-CIO). For purposes of this RFP, this term also includes the agreements between the State and the State Police Investigators Unit [represented by the NYS Police Investigators Association (NYSPIA), Local 4, I.U.P.A., AFL-CIO] and the State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)].

**Light Duty** means that light duty assignments (for Group 1 Employees as defined in Section I.D.1) will be within the Employee's title and at the Employee's work location. In cases where minimum staffing levels have been established, light duty will not be used to affect existing minimum staffing levels. For further information, see Exhibit II.A, New York State Attendance and Leave Manual Policy Bulletin 93-02, Page 7.B. Assignments.

**MEP** means the Medical Evaluation Program, which is the voluntary program that provides injured employees an expedited medical consultant examination to determine an Employee's degree of disability upon which management makes a decision regarding the Employee's assignment to light duty.

**Modified Duty Assignment** means assignments (for group 2 Employees) to perform administrative duties including, but not limited to: desk duty, records management, inventory control, non-criminal investigations, communications and other tasks not related to patrol functions, field supervision, or active criminal case investigation.

**Pass Day** means day of the week the Employee is not scheduled to work.

**Program** means the Dispute Resolution Program.

**Program Review** means the Contractor's review of the conflicting medical evaluations, which are Appealed by the Employee's Treating Physician.

**Program Reviewing Physician (PRP)** means a physician licensed and/or registered with the appropriate licensing and/or disciplinary agency, who has been designated by the Contractor to perform the review of medical records, the Treating and Evaluating Physicians' reports, and other documentation necessary to render an opinion, which will support either the Treating or Evaluating Physicians' determination of the Employee's degree of disability. The PRP cannot be the Staff, Treating or Evaluating Physician.

**Program Review Period for the Security Services, Security Supervisors and Agency Law Enforcement Services Units' Employees** means seven (7) calendar days from the day the Contractor receives a Valid Appeal from the Treating Physician.

**Program Review Period for the Division of New York State Police Employees** means ten (10) calendar days from the day the Contractor receives a Valid Appeal from the Treating Physician.

**Proposal** means both the Offeror's Technical Proposal and Cost Proposal submitted in response to the RFP entitled 'Dispute Resolution Program' dated March 10, 2005.

**RFP** means the Request for Proposal, entitled, 'Dispute Resolution Program', dated March 10, 2005.

**Services** means the Program Services including, but not limited to, the Workers' Compensation Dispute Resolution Program medical review to be provided by the Offeror as required by the Dispute Resolution Program as set forth in this RFP.

**Staff Physician** means the physician(s) employed by the New York State Police.

**State** means New York State.

**Treating Physician** means the physician chosen by the Employee to provide direct care for his/her disability.

**Valid Appeal** means an Appeal filed on behalf of an eligible Employee that contains all medical records and supporting information, including the Appeal Request Form needed by the Program Reviewing Physician, to issue an opinion in support of either the Employee's Treating or Evaluating Physician's medical opinion regarding the eligible Employee's degree of disability.

**Work Day** means any day the Employee is scheduled to report to work. Work Days include Saturdays, Sundays and Holidays.

#### **D. Current Program Description and Related Benefit Design Details**

##### **1. Description of Affected Bargaining Units**

###### **Group 1**

The following units of employees are included in Group 1:

The Security Services Unit (SSU) consists of State Security personnel (other than State Police) and Institutional Safety Officers. Titles in this unit include Correction Officer, Corrections Sergeant, Secure Hospital Treatment Assistant, and Safety and Security Officers. As of June 1, 2004, there were 22,387 employees in this bargaining unit.

The Security Supervisors Unit (SSPU) consists of supervisory security personnel (i.e., Correction Lieutenant, Forest Ranger Supervisor, and Chief Safety and Security Officers). As of June 1, 2004, there were 1,059 employees in this bargaining unit.

The Agency Law Enforcement Services Unit (ALES) consists of certain personnel who have police duties and responsibilities and are employed in the Department of Environmental Conservation, Office of Parks, Recreation and Historic Preservation, and the State University of New York. Titles in ALES include Environmental Conservation Officer, Park Patrol Officer, and University Police Officer I and II. As of June 1, 2004, there were 692 employees in this bargaining unit.

## **Group 2**

The following units of employees are included in Group 2:

The State Police Investigators consists of Investigators in the Division of State Police who are responsible for surveillance and investigations of major crimes. As of June 1, 2004, there were 1,114 employees in this bargaining unit.

The State Police Commissioned Officers and Non-Commissioned Officers Unit is represented by the Police Benevolent Association of the New York State Troopers, Inc. and consists of supervisory employees from the rank of Sergeant through Major. As of June 1, 2004, there were 734 employees in this bargaining unit.

The State Police Management/Confidential Group consists of management employees who are not represented. As of June 1, 2004, there were 39 employees in this bargaining unit.

## **2. Overview of the Administration of the New York State Workers' Compensation Benefit**

All employers in the State are required to provide workers' compensation coverage for their employees pursuant to the New York State Workers' Compensation Law (Law). The Law provides coverage for medical treatment, including pharmaceuticals, for employees in need of treatment for occupational injury or illness with no out of pocket expense to employees. In addition to medical benefits, employees receive indemnity benefits or wage replacement when injured and out of work due to a work related illness or injury.



New York State, as an employer, can extend negotiated enhancements to the mandatory statutory benefits to State employees under certain conditions. The DRP is one of the several collectively bargained enhancements.

The workers' compensation benefit for State employees involves the interaction and oversight of several State agencies including the Workers' Compensation Board (Board) which determines the occupational nature and compensability of employee injuries/illnesses; the State Insurance Fund (Fund) which functions as the State's workers' compensation insurance carrier; the Governor's Office of Employee Relations (GOER) which negotiates terms and conditions of employment with the seven (7) labor unions representing State employees; and the Department of Civil Service (DCS) which manages the contract referred to as the Insuring Agreement under Workers' Compensation Law, Section 88-C.

### **3. Overview of the of Workers' Compensation Benefit**

#### **Group 1 - Security Services, Security Supervisors and Agency Law Enforcement Services Units**

Exhibit II.A contains the New York State Attendance and Leave Manual Policy Bulletin (Bulletin) provisions that explain the benefits and administration of the Security Services, Security Supervisors, and Agency Law Enforcement Services Units' workers' compensation leave benefit.

The current collective bargaining agreement (Exhibit II.C) for Employees in these Units extends the NYS Medical Evaluation Program (MEP) described in Exhibit II.D. In addition to other provisions, the MEP authorizes "light duty" assignments, which are made available to employees depending on their degree of disability.

If an Employee opts to participate in the MEP, he/she receives the fully paid leave benefit described above. If the Employee elects **not** to participate in the MEP, he/she receives only those benefits required by Workers' Compensation Law. Since the program's inception, the Fund has functioned as the administrator of the MEP.

The DRP, a program separate from the MEP, allows for the resolution of conflicting medical opinions regarding an Employee's degree of disability and was agreed upon by

the parties during collective bargaining. See Exhibit II.E for specific details of the program.

Contract negotiations are currently underway between the State and unions representing Employees in the following units: Security Services, Security Supervisors and Agency Law Enforcement Services. Pending completion of these negotiations, the MEP and DRP benefits remain unchanged.

**Group 2 - State Police in the State Police Investigators Unit, State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit, and State Police Management/Confidential Group**

In 2001, the State Police in the State Police Investigators Unit, State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit, and State Police Management/Confidential Group were added to the DRP. The DRP for these employees covers both occupational and non-occupational disabilities.

These employees receive an employer enhanced workers' compensation benefit that exceeds the workers' compensation statutory benefit as provided by New York State Workers' Compensation Law. This enhanced benefit is detailed in 'The State Police Administrative Manual' under the Superintendent's Regulations (Exhibit II.F).

**4. Overview of the Medical Evaluation Program (MEP)**

The MEP is a voluntary program that provides injured Employees an expedited consultant examination to determine the degree of disability. The Employing Agency uses this decision to determine the appropriateness of a "light duty" assignment. This consultant examination is arranged by the Fund.

In accordance with the Labor Agreement (Exhibit II.C), Employees who agree to participate in the MEP, and who have lost time beyond two (2) full Work Days may be examined upon the request of the Employing Agency by a physician designated by the Fund.

The medical examination conducted by an Evaluating Physician determines an Employee's degree of disability and prognosis and is used by management to determine an Employee's ability to return to work and eligibility for "light duty" assignments.

Currently, the Fund reports the results of the Evaluating Physician's examination to the Treating Physician and the Employing Agency. Under the Program, the Fund shall also report the results of this examination to the DRP Contractor.

When the degree of disability is greater than fifty percent (50%), the Employee continues to receive leave benefits at full pay.

When the degree of disability is fifty percent (50%) or less, the Evaluating Physician prepares a statement of capabilities and limitations so that the Employing Agency has sufficient information to establish "light duty" assignments for the Employees.

## **5. Overview of the Dispute Resolution Program (DRP)**

### **Group 1 - Security Services, Security Supervisors and Agency Law Enforcement Services Units**

The DRP is intended to provide Employees who elect to participate in the MEP an opportunity for a third party medical review of those instances where the disability determination of the Fund's Evaluating Physician is in disagreement with the Employee's Treating Physician. The Program's Reviewing Physician (PRP) shall evaluate medical records, the Treating and Evaluating Physician's reports and other necessary documentation, which may include laboratory reports and X-rays, to render an opinion, which will support either the Treating or Evaluating Physician's position in regards to the Employee's degree of disability.

Cases eligible for the DRP shall be those cases when an Employee has elected to participate in the MEP and:

- where the Treating Physician determines that the Employee has an injury/illness resulting in a disability of greater than fifty percent (50%) and the Evaluating Physician determines that the Employee has an injury/illness resulting in a disability of fifty percent (50%) or less; OR
- where the Treating Physician determines that a disability exists and the Evaluating Physician determines that the Employee has no disability.

Requests for dispute resolution **must** be initiated on behalf of the Employee by the Employee's Treating Physician using an Appeal Request Form. It is the Treating

Physician's responsibility to provide, along with the Appeal Request Form, any and all medical documentation in order to substantiate the disability level determination, treatment plan, and prognosis advanced by the Treating Physician. The Employee is responsible for providing the Appeal Request Form to the Treating Physician, informing the Treating Physician of the Appeal process and requesting the Treating Physician to submit the Appeal to the Contractor.

For an Appeal to be considered timely, the Treating Physician has three (3) Business Days from the time the Employee is notified to return to work to submit the Appeal Request Form and documentation to the Contractor. In order to meet the filing deadline, the Appeal Request Form and documentation may be sent to the Contractor via facsimile or overnight mail. If the Employee's notification to return to work occurs prior to noon, that day is the first day of the Appeal Period. If the notification occurs at noon, after noon or on a non-Business Day, the next Business Day is the first day of the Appeal Period.

The Contractor must notify the Employing Agency, the Treating Physician, the Evaluating Physician, the Employee, the appropriate Union and the Fund of the receipt of a Valid Appeal identifying the date and time of receipt.

It is the Evaluating Physician's responsibility to provide, upon notification by the Contractor of receipt of a Valid Appeal, any and all medical documentation in order to substantiate the disability level determination, treatment plan, and prognosis advanced by the Evaluating Physician.

When the Contractor receives a Valid Appeal, the Program Review must take place within seven (7) calendar days from the day of receipt.

In those cases where an untimely Appeal is submitted, the Employee will remain in or be placed in LWOP status until a Valid Appeal is received.

When the Program Review decision is not completed within the Program Review Period, the Employee (either working, on LWOP, or charging accruals) will be placed in Workers' Compensation Leave full pay status as defined in Article 14.9 of the Labor Agreement (Exhibit II.C), on the next assigned Work Day until the Program decision is rendered.

The Contractor shall report the PRP's decision to uphold the Treating or Evaluating Physician's determination in writing within the specified Review Period. This report may be sent via facsimile but must also be mailed to the Employee, Employing Agency, the Evaluating Physician, the Treating Physician, and the appropriate Union and the Fund.

If the PRP finds in favor of the Treating Physician's determination of degree of disability, the Employing Agency will advise the Employee through a telephone call and letter not to report to work until further notification.

If the PRP finds in favor of the Evaluating Physician's determination of degree of disability, the Employing Agency will notify Employees to report to work in a medically appropriate assignment.

Requests for further Appeals beyond the Program pertaining to issues of eligibility for statutory benefits shall be made to the Board pursuant to the New York State Workers' Compensation Law.

**Group 2 - State Police in the State Police Investigators Unit, State Police Commissioned Officers and Non-Commissioned Officers Unit, and State Police Management/Confidential Group**

The DRP as described above in Section I.D.5 (for Group 1) has been adapted to meet the specific employment environment of the NYS Division of State Police and Employees in the covered Units. Application of the DRP is intended to provide eligible Employees access to a third party review of medical determinations and records in situations where they are: assigned to; terminated from; or receive a further modification of an existing or extension of a modified duty assignment. The DRP as applied to the Division of State Police (DSP) covered Employees contains provisions for eligible Employee Appeals of disputed medical treatment decisions involving both work-related and non work-related injuries and illnesses.

Eligible Employees may have the right to utilize the DRP under the following circumstances:

1. When requesting or upon assignment of a modified duty assignment due to a non-work or work-related injury or illness.
2. When the DSP, as the Employer, decides to terminate or the Employee wishes to terminate a modified duty assignment.
3. When the Employee is denied an extension of a modified duty assignment.

The DRP review processes covering both the non-work related and work-related benefits closely follow those described in I.D.5 above (for Group 1) with the following differences:

- The provisions of the DRP do not apply to covered Employees who are pregnant during months five (5) through nine (9).
- The Staff Physician has an active role in the DRP process for this group of Employees. Exhibit II.G outlines the specific functions assumed by the Staff Physician.
- Covered Employees must notify their Employer within five (5) Working Days of the date the Employee is notified of a modified duty determination of their intent to appeal under the provisions of the DRP.
- The Employee's Treating Physician must submit an Appeal of the Staff Physician's decision within fifteen (15) Working Days from the date the Employee is advised in writing of the modified duty assignment.
- To participate in the DRP, Employees must meet specified 'level of fitness criteria' which is outlined in detail in Exhibit II.G.

The procedures governing the process by which covered Employees are considered for a modified duty assignment differ depending on whether the Employee's injury/illness is non-work or work-related. Details of the steps involved in both processes are contained in Exhibit II.G.

Specific and different procedures govern the process by which modified duty assignments are extended. These steps differ dependent on whether the Employee's

injury/illness is non-work or work-related. Details of the steps involved in both processes are contained in Exhibit II.G.

Requests for dispute resolution **must** be initiated on behalf of the Employee by the Employee's Treating Physician using an Appeal Request Form. It is the Treating Physician's responsibility to provide, along with the Appeal Request Form, any and all medical documentation in order to substantiate the disability level determination, treatment plan, and prognosis advanced by the Treating Physician. The Employee is responsible for providing the Appeal Request Form to the Treating Physician, informing the Treating Physician of the Appeal process and requesting the Treating Physician to submit the Appeal to the Contractor.

The Treating Physician has fifteen (15) Work Days from the time the Employee is notified to return to work to submit the Appeal to the Contractor. In order to meet the filing deadline, the Appeal may be sent to the Contractor via facsimile or overnight mail. If the Employee's notification to return to work occurs prior to noon, that day is the first day of the Appeal Period. If the notification occurs at noon, after noon or on a non-Business Day, the next Business Day is the first day of the Appeal Period.

The Contractor must notify the Employing Agency, the Treating Physician, the Evaluating Physician, the Employee, the appropriate Union and the Fund of the receipt of a Valid Appeal identifying the date and time of receipt.

The Treating Physician has fifteen (15) Work Days from receipt of the Employee's notice contesting the assignment to provide any and all medical documentation to the Contractor in order to substantiate the disability level determination, treatment plan, and prognosis advanced by the Staff and Evaluating Physicians.

When the Contractor receives the Appeal, the Program Review must take place within seven (7) calendar days from the day of receipt.

The Contractor shall report the Reviewing Physician's decision to uphold the Treating or Evaluating Physician's determination in writing within the specified Review Period [seven (7) calendar days]. This report may be sent via facsimile but must also be mailed to the

Employee, Employing Agency, the Evaluating Physician, the Treating Physician, the appropriate Union and the Fund.

See Exhibit II.F and Exhibit II.G for specific program details pertaining to the review of Appeals for Group 2.



**SECTION II: ADMINISTRATIVE INFORMATION****A. Timeline/Key Events**

The following timeline will be in effect for this RFP:

RFP Release Date	March 10, 2005
Pre-Proposal Conference	March 24, 2005
Questions Due Date	March 30, 2005
Release Date of Official Responses to Questions	April 8, 2005
Proposals Due Date	April 29, 2005
Selection Date	July 15, 2005
Contract Start Date	November 1, 2005

**B. Registration Process and Pre-Proposal Conference**

A Registration Process has been established for prospective Offerors to stay informed of any amendments to the RFP or the procurement process. Prospective Offerors are encouraged to register by completing Exhibit I.K and submitting it by mail or email to the address below or via the website link "Submit a question or comment".

A Pre-Proposal Conference will be held at 2:30 p.m. ET on March 24, 2005, in Classroom 2 of the Department of Civil Service, Building #1 on the State Campus (refer to Exhibit I.A for directions). All interested Offerors are invited; however, attendance is not required in order to submit a Proposal. In the interest of efficiency, each Offeror is requested to send no more than three (3) representatives to the conference. If your organization plans to attend the Pre-Proposal Conference, please notify Ms. Stefanie Cassier in writing, via facsimile or mail or electronically at the address below, at least five (5) Business Days before the conference.

**C. Restrictions on Contact Concerning this RFP**

From the date this RFP is released until the end of the procurement, all contacts and inquiries concerning the procurement must be made through Ms. Cassier at the address set forth in Section II.D of the RFP.

**D. Submission of Questions**

All questions concerning this RFP and this procurement must be submitted to:

Ms. Stefanie Cassier  
Employee Benefits Division  
NYS Department of Civil Service, Building 1  
The W. Averell Harriman State Office Building Campus  
Albany, New York 12239  
Telephone: (518) 457-2646  
Fax: (518) 457-1311  
E-Mail: DRPRFP@mail3.cs.state.ny.us

All prospective Offerors are strongly urged to submit questions to Ms. Cassier via e-mail, on a 3 ½" diskette or CD (utilizing Microsoft Word 2002 and Microsoft Excel 2002), or in writing, via facsimile or mail at least forty-eight (48) hours prior to the date of the Pre-Proposal Conference. Written and oral questions also may be submitted at the Pre-Proposal Conference. Each question must cite the particular RFP section, page number and paragraph number to which it refers. Responses to some questions may be deferred until after the conference. All responses will be considered unofficial until issued or confirmed in writing by DCS.

All questions relating to this RFP must be directed in writing to Ms. Cassier at the preceding address. Only those questions received prior to 5:00 p.m. ET, on the Questions Due Date as shown in Section II.A of the RFP, will be accepted. Each question must cite the particular RFP section, page number, and paragraph number to which it refers. The questions submitted must contain the name and title of the individual submitting the question as well as the organization the individual represents.

On the release Date of Official Responses to Questions, the DCS will provide a compilation of all questions received and DCS's official responses on the DRP RFP official website of <http://www.cs.state.ny.us/drp>. The DCS' written official responses will be deemed controlling. In providing responses to questions, the DCS will not provide information about proprietary processes or information regarding the incumbent Contractor.

Written copies of all documents issued by DCS related to this procurement are available upon written request to Ms. Cassier at the address above.

#### **E. Submission of Proposal**

Each Offeror must submit one original (1) and nine (9) copies each of separately written Technical and Cost Proposals. Each Technical Proposal document and each Cost Proposal document must be separately bound and externally labeled with the Program name and the Offeror's name. The Offeror's Original Technical and Original Cost Proposal must be marked "ORIGINAL" and contain an original signature of an official authorized to bind the Offeror to its provisions. The remaining copies of the Technical and Cost Proposals may contain a copy of the official's signature. In addition, a separate, clearly labeled copy of the Technical and Cost Proposals on a 3½" diskette or CD should be included in each original bound copy. The DCS currently utilizes Microsoft Word 2002 and Microsoft Excel 2002. Please note that the original hard copy of the proposal will be deemed controlling by the DCS when reviewing the proposal. All proposals must be mailed or delivered to:

Mr. Robert DuBois, CEBS  
Director, Employee Benefits Division  
Attention: Ms. Stefanie Cassier  
NYS Department of Civil Service  
State Campus, Building 1, Room 121  
Albany, New York 12239

The outside of each box or envelope containing Technical and/or Cost Proposals must be labeled "Proposal enclosed – Dispute Resolution Program."

**All Proposals must be received by 12:00 p.m. ET on the Proposal Due Date as set forth in Section II.A of the RFP. No exceptions will be made for late submission or delays in delivery of the Proposal.** Offerors must allow sufficient delivery time to ensure the DCS's receipt of their Proposal by the deadline. If the Proposal is delivered by mail or courier, DCS recommends that it be sent "return receipt requested," so the Offeror obtains proof of delivery.

All Proposals submitted become the property of DCS. Any Proposal received after 12:00 p.m. ET on the Proposal Due Date will not be opened and may be returned to the prospective Offeror at the DCS's discretion.

DCS will accept amendments and/or additions to an Offeror's Proposal if the request is received by the DCS prior to 12:00 p.m. ET on the Proposal Due Date. Such a request must be submitted in writing, in accordance with the format set forth in Section II.F.4.f of the RFP, and will be included as part of the Offeror's Proposal.

Offerors are cautioned to verify their Proposal before submission. Except for material received from an Offeror in response to a request by the DCS, the DCS will not accept amendments or additions to a Proposal if such material is received from an Offeror after 12:00 p.m. ET on the Proposal Due Date. An Offeror's request to withdraw a Proposal after the Proposal Due Date may be considered at the sole discretion of the DCS.

For your convenience, a Proposal Submission Requirement Checklist, Exhibit I.B is enclosed. We recommend you provide a completed copy with your submission.

#### **F. Mandatory Proposal Requirements**

The DCS will accept Proposals only from qualified Offerors, and will consider for evaluation and selection purposes only those Proposals that it determines to be in compliance with the requirements set forth in this Section. Sub-contracting is permissible for this solicitation.

1. **Timely Submission:** The Proposal, composed of both the Cost Proposal and the Technical Proposal, must be received no later than 12:00 p.m. ET on the Proposal Due Date. Any Proposal submitted in response to this RFP after 12:00 p.m. ET on the Proposal Due Date shall not be accepted by the DCS and may be returned to the prospective Offeror, unopened, at the DCS's discretion.
2. **Qualified Offeror:** The Proposal must be submitted by a qualified Offeror. Any Proposal received from an Offeror deemed by the DCS not to be a qualified Offeror will be removed from consideration. To establish itself as a qualified Offeror for purposes of this RFP, the Offeror must satisfy the following prerequisites:
  - a. The Offeror must possess the legal capacity to enter into a contract with the President of the New York State Civil Service Commission ("Commissioner");
  - b. The Offeror's principal place of business is not located in a state that penalizes New York State vendors, nor will the goods or services offered be substantially produced or performed in such a state (refer to Section II.P);
  - c. The Offeror, if awarded the contract resulting from this RFP, must agree to complete Exhibit I.F to comply with Section 5-a of the Tax Law.

- d. The Offeror must have a panel of physicians with at least one (1) representative from each of the following specialties: Cardiologist, Chiropractor, Dentist-Oral Surgeon, Dermatologist, Gastroenterologist, Gynecologist, Hematologist, Internist, Neurologist, Orthopedist, Otorhinolaryngologist, Pathologist, Physiatrist, Podiatrist, Psychiatrist, Psychologist, Radiologist, Hand Surgeon, Neuro-Surgeon, Plastic Surgeon, Vascular Surgeon and Urologist.

Any Offeror that fails to demonstrate and provide current, valid documentation to the satisfaction of DCS that it meets the prerequisites stated above will be removed from consideration; neither the Technical nor Cost Proposal shall be evaluated.

3. **Transmittal Letters:** Any Proposal that does not include the requisite transmittal letters shall not be accepted by the DCS. The transmittal letter must:
  - a. Be signed by an official authorized to bind the Offeror to the terms and conditions of the RFP and the Offeror's Proposal;
  - b. Include a statement attesting that the Offeror meets each of the prerequisites in Section II.F.2 (a-d) above and include current, valid documentation clearly demonstrating fulfillment of each of the stated prerequisites;
  - c. Include a statement as to the period during which the provisions of the Proposal will remain valid. A minimum of 365 days from the Proposal Due Date is required;
  - d. Include an affirmative statement agreeing in principle to satisfy the comprehensive responsibilities outlined in Section III of this RFP;
  - e. Include a clear statement of acceptance by the Offeror of the draft contract terms and conditions set forth in Section VI, including particularly Appendices A and B, which are not negotiable; and,
  - f. Include an affirmative statement to comply with the provisions of Executive Order 127 (Procurement and Contracting Disclosure) and Tax Law Section 5-a (Certification Regarding Sales and Compensating Use Tax) and by submitting a complete Certification Regarding Sales and Compensating Use Tax (Exhibit I.F) upon conditional award of the contract.

4. **Formatting Requirements:** The Technical Proposal and Cost Proposal each must comply with the following formatting requirements:
- a. **Number of Originals and Copies:** The Offeror must submit one (1) original and nine (9) copies each of separately written Technical and Cost Proposals. The *Original* Technical and *Original* Cost Proposal must be marked "ORIGINAL" and contain an original signature of an official authorized to bind the Offeror to its provisions. The remaining copies of the Technical and Cost Proposals may contain a copy of the official's signature. In addition, a clearly labeled copy of the proposal on a 3½" diskette should be included in each Original Proposal bound copy. The DCS currently utilizes Microsoft Word 2002 and Microsoft Excel 2002;
  - b. **Binding of Proposal:** The Technical and Cost Proposals must be separately bound. The official name of the organization and the name of the program must appear on the outside front cover of each copy of the Offeror's Technical and Cost Proposal. If the Proposals are submitted in loose-leaf binders, the official name of the organization and the name of the program also must appear on the spine of the binders;
  - c. **Table of Contents:** Each Proposal must include a table of contents;
  - d. **Index Tabs:** Each major Section of the Proposal 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;
  - e. **Pagination:** Each page of the Proposal, including Exhibits, must be labeled on the upper right with the section title and section reference, page number, and date. Pages within each section and exhibit must be numbered consecutively; and
  - f. **Proposal Updates/Corrections:** Each Offeror must submit its Proposal so that any update pages required by the DCS can be easily incorporated into the original Proposal. Should it be necessary for an Offeror to submit additional information in support of its Proposal, it must be submitted in accordance with the following: upon written notification by the Offeror and agreement by DCS, new or replacement pages may be placed in the Proposal. All new or replacement pages will show the
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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 DCS on the errata sheet to be placed at the front of the Proposal copy.

5. **Required Content of Proposals:** The Technical Proposal and Cost Proposal each must comply substantially with the program requirements set forth in Section III of this RFP.
  
6. **New York State Executive Order 127**
  - a. At the time the Offeror submits its Proposal in response to this RFP, the Offeror must demonstrate its compliance with New York State Executive Order 127, "Providing for Additional State Procurement Disclosure", by disclosing to the Department information on every person or organization retained, employed, or designated by or on behalf of the Offeror to attempt to influence the procurement process. The Offeror also must disclose whether such person or organization has a financial interest in the procurement. The Offeror is required to submit this information by use of Exhibit I.C to this RFP. See Section II.S of this RFP for further information.
  
  - b. Subsequent to the date of the Offeror's submission of its Proposal in response to this RFP until the date of the award, the Offeror must demonstrate its compliance with New York State Executive Order 127 by disclosing to the Department information on every person or organization *subsequently* retained, employed, or designated by or on behalf of the Offeror to attempt to influence the procurement process. The Offeror is required to inform the Department of any and all persons or organizations subsequently retained, employed, or designated by or on behalf of the Offeror before the Department is contacted by such persons or organizations. The Offeror is required to submit this information by use of Exhibit I.C to this RFP. See Section II.S of this RFP for further information.
  
  - c. The Offeror must further demonstrate its compliance with New York State Executive Order 127 by disclosing to the Department whether any State department, office or division, or any board, commission or bureau thereof, or any public benefit corporation, public authority or commission at least one (1) of whose members has

been appointed by the Governor, including the State University of New York and the City University of New York, has made a finding of the Offeror's non-responsibility under New York State Executive Order 127 in the five (5) years preceding the date of the Offeror's submission of its Proposal to the Department. The Offeror is required to submit this information by use of Exhibit I. D of this RFP. See Section II.S of this RFP for further information.

### **G. Disclosure of Proposal Contents**

All materials submitted in response to this RFP shall become the property of DCS and may be returned to the Offeror at the sole discretion of DCS. Proposals may be reviewed by any person, other than one associated with a competing Offeror, designated by DCS. Offerors may anticipate that proposals will be reviewed by staff and consultants retained by the DCS as well as staff of other State agencies interested in the administration of the subject program services including, but not limited to, the Governor's Office of Employee Relations and the Division of the Budget. DCS has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this RFP.

If an Offeror believes that any information in its Proposal constitutes trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law (FOIL), Article 6 of the Public Officers Law, the Offeror must make that assertion by completing Exhibit I.E (A copy of the form also has been provided on diskette). 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 Exhibit I.E contains information regarding appropriate justification for protection from FOIL disclosure.

The completed Exhibit I.E must be submitted to DCS both as hard copy and on diskette. In addition, the Offeror must submit an additional copy of both the Technical Proposal and Cost Proposal noting the specific portions of each Proposal requested to be protected from FOIL disclosure by highlighting, underlining, or otherwise marking such sections in a manner such that the material remains visible. Such copies shall be separately bound and clearly labeled "Requested Redactions." These materials will not be considered part of the Offeror's proposal and will not be reviewed as a part of the procurement's evaluation



process. The completed Exhibit I.E and the related materials must be mailed or delivered to DCS at the address below no later than ten (10) Business Days after the Proposal Due Date. The materials must be submitted to:

Ms. Stefanie Cassier  
Employee Benefits Division  
NYS Department of Civil Service  
State Campus, Building 1, Room 121  
Albany, New York 12239

Alternatively, if the Offeror chooses not to assert that any proposal material should be protected from FOIL disclosure, the Offeror must advise Ms. Cassier by letter no later than ten (10) Business Days after the Proposal Due Date.

In the event any material is requested pursuant to FOIL, the DCS will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

#### **H. Limitation of Liability**

The DCS is not liable for any cost incurred by any Offeror prior to approval by the Comptroller of the State of New York of an executed contract. Additionally, no cost will be incurred by the DCS for any Offeror's participation in any procurement activities.

#### **I. Data and Exhibits**

The DCS has taken care in preparing the data accompanying this RFP (both in the hard copy Exhibits and those contained on disk) and sample document Exhibits. However, the DCS does not warrant the accuracy of the data; the numbers or statistics, which appear in Exhibits and sample documents referenced throughout this RFP, 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 proposals at their own discretion.

#### **J. Oral Presentations**

The DCS may, at its discretion, elect to have all Offerors provide oral presentations of their Proposal. The site for an Offeror's presentation may include the Offeror's facilities. The DCS also may, at its discretion, determine that site visits will be performed. The

Procurement Manager will coordinate the necessary scheduling arrangements with the Offerors.

In lieu of, and/or in addition to, conducting the oral presentations and/or site visits, the DCS may ask for clarifying information from an Offeror based on comments raised after a review of the Offeror's written proposal and/or the reference check, information presented at an oral presentation, and/or based on a site visit. The required clarifying information will be set forth in a letter and will contain a due date by which the Offeror must provide the required information.

#### **K. Submission of Errors or Omissions in the RFP Document**

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

##### **1. Process for Submitting Assertions of Errors or Omissions in RFP Document**

- A. *Time Frame* - Assertions of errors or omissions in the procurement process which are or should have been apparent prior to the Proposal Due Date must be received by the Commissioner, in writing, three (3) business days after the release of official responses to questions submitted as specified in Section II.A.
- B. *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. As a consequence of reviewing the assertion, the DCS may elect to extend the Proposal Due Date as may be appropriate. Notice of any such extension will be provided to all organizations who registered via mail or e-mail. Notice of any extension will also be posted to the URL: [www.cs.state.ny.us/drp](http://www.cs.state.ny.us/drp).
- C. *Format of Submission* - All submissions asserting an error or omission must be in writing and submitted to the Commissioner at the following address:

Daniel E. Wall, Commissioner

NYS Department of Civil Service  
State Campus, Building 1  
Albany, New York 12239

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

**"Submission of Errors or Omissions  
for the Dispute Resolution Program Request for Proposal"**

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.

2. The Review Process for Assertions of Errors or Omissions in RFP Document

The DCS 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 DCS but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, 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 his 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 DCS 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 RFP document.

#### **L. Notification of Award**

An award notification letter will be sent to the selected Offeror indicating a conditional award subject to successful contract negotiations. The remaining Offerors will be notified of the conditional award and the possibility that failed negotiations could result in an alternative award. At this time, Offerors will be advised of the opportunity for a debriefing by the DCS of the evaluation of that Offeror's Proposal. No public discussion or news releases relating to this RFP or the resulting Agreement shall be made by any Offeror or their agent without the prior approval of DCS.

#### **M. Submission of Award Protests**

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

##### **1. Process for Submitting Post Award Protests of the Selection Decision**

- A. *Time Frame* - Any protest of the selection decision must be received no later than five (5) business days after an Offeror's receipt of written notification by DCS that another Offeror has been conditionally awarded a contract subject to successful negotiations.
- B. *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.
- C. *Format of Submission* - All submissions of protest must be in writing and submitted to the Commissioner at the following address:

Daniel E. Wall, Commissioner  
New York State Department of Civil Service  
State Campus, Building 1  
Albany, New York 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 the Dispute Resolution Program Request for Proposal"**

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

2. The Review Process for Submission of Protests

The DCS shall conduct the review process of submitted protests. The 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 DCS but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or his designee, as the case may be, to support its submission. The 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 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.

In the event that an Offeror protests the selection decision, the DCS shall continue working with the selected Offeror pending the outcome of the protest. Any Offerors whose Proposals 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 Proposals shall remain valid.

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

#### **N. DCS Reservation of Rights**

In addition to any rights articulated elsewhere in this RFP, the DCS reserves the right to:

1. Amend the RFP: If the DCS elects to amend any part of the RFP, a copy of the amendment will be provided to those Offerors who complete Exhibit I.K (DRP Prospective Offeror Requisition Form);
2. Withdraw the RFP at its sole discretion;
3. Disqualify any Offeror whose conduct and/or Proposal fails to conform to the mandatory prerequisites of the RFP;
4. Require clarification for the purpose of assuring a full and complete understanding of an Offeror's Proposal;
5. Reject any and all Proposals received in response to this RFP;
6. Change any of the scheduled dates stated in this RFP;
7. Establish programmatic and legal requirements to meet DCS 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;
8. Eliminate mandatory requirements unmet by all Offerors;
9. Award a contract for any or all parts of a Proposal and negotiate contract terms and conditions to meet agency program requirements consistent with the solicitation;

10. Use the Proposal, information obtained through site visits, management interviews, and the DCS'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 DCS's request for information in the course of evaluation and selection under this RFP;
11. Negotiate additional terms and conditions in the Agreement resultant from this RFP which are to the DCS's and the State's advantage and which do not substantially alter the requirements of the RFP;
12. Request best and final offers; and
13. Set aside the conditional award to the selected Offeror should the DCS be unsuccessful in negotiating an Agreement with the selected Offeror within a time frame acceptable to the DCS; such time frame is to be determined solely by the DCS based on the best interest of the DCS and the State. If DCS determines that contract negotiations between DCS and the selected Offeror are unsuccessful, DCS may invite the responsible and responsive Offeror with the next lowest cost within the Final Combined Score Band to enter into negotiations for purposes of executing a contract.

#### **O. Code of Ethics**

All Offerors and Offerors' employees and agents must be aware of and comply with the requirements of the New York State Public Officers Law ("POL"), and particularly POL Sections 73(5) 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 State employees. In signing its Proposal, each Offeror guarantees knowledge and full compliance with such provisions for purposes of this RFP 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 procurement process, termination, suspension or cancellation of the contract and criminal proceedings as may be required by law.

#### **P. Reciprocity and Sanctions Provisions**

Offerors 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 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain.

A current list of jurisdictions subject to this provision is available from the Empire State Development Corporation on-line at [http://www.nyscr.com/pub\\_omnibus.asp](http://www.nyscr.com/pub_omnibus.asp).

**Q. Minority and Women-Owned Business Enterprises (MWBE) Participation and Equal Employment Opportunities Requirements (EEO)**

1. General Obligations

The State of New York and the DCS actively support and encourage the participation of certified minority and women-owned business enterprises and equal employment opportunities for minorities and women on State contracts. The contract that the DCS will prepare based on this RFP (the "Agreement") will contain provisions regarding the participation of MWBEs in the performance of the Agreement. Those provisions are set forth below. Generally, the provisions state the successful Offeror's obligations under Article 15-A of the Executive Law and its implementing regulations, including clauses dealing with equal employment opportunities, organized labor cooperation and advertisements for employees.

2. Minority and Women-Owned Business Enterprises (MWBEs)

The DCS has established zero percent (0%) goals for the participation of MWBEs in the performance of services under the Agreement. However, the Offeror is encouraged to use its best efforts to solicit and obtain the participation of MWBEs on the Agreement.

3. Equal Employment Opportunity Obligations

The Offeror shall undertake or continue existing programs of affirmative action 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, affirmative action shall apply in the areas of



recruitment, employment, job assignment, promotions, upgradings, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation.

The Offeror's EEO Policy Requirements under this RFP shall contain, but not necessarily be limited to, the following:

- a. The Offeror must demonstrate its compliance with the Equal Employment Opportunity (EEO) Act by affirming to the Department that the Offeror's EEO Policy Statement contains, at a minimum, language consistent with the provisions set forth in Exhibit I.L. During the performance of the Agreement, the successful Offeror shall agree to comply with such EEO Policy Statement. The Offeror's EEO Policy Statement shall contain, but not necessarily be limited to, the services under the Agreement. However, the Offeror is encouraged to use its best efforts to solicit and obtain the participation of MWBEs on the Agreement. Offeror's must affirm their ability to comply with this requirement by submitting Exhibit I.L.
- b. The Offeror shall submit a staffing plan of the anticipated work force (see Exhibit I.I to this RFP) to be utilized on the Agreement or, where required, information on the Offeror's total workforce, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories specified by the DCS.
- c. On a periodic schedule to be provided by the DCS, the successful Offeror shall submit to the DCS a workforce utilization report, on a form to be supplied by the DCS, of the workforce actually utilized on the Agreement, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the DCS.
- d. The Offeror shall include in every sub-contract in connection with the Agreement the requirement that sub-Contractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and, when requested, provide to the Offeror information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on the Agreement.

The Offeror must submit with their proposal a completed Work Force Employment Utilization Report Service and/or Consultant Firms (Exhibit I.T), EEO Offeror Certification of Compliance (Exhibit I.L), and refer to Minority and Women-Owned Business Enterprises (MWBE) Participation and Equal Employment Opportunities Requirements (EEO) requirements above.

#### **R. Americans With Disabilities Act Requirements**

The successful Offeror 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 resultant from this RFP shall be accessible under Title II of the Americans With Disabilities Act, and as otherwise may be required under the Americans With Disabilities Act.

Offerors must submit a statement that they are in compliance with the Americans With Disabilities Act.

#### **S. Procurement and Contracting Disclosure Requirements: New York State Executive Order 127**

##### **1. General Obligations**

New York State Executive Order 127 requires specific elements of disclosure in the public procurement process through the identification of persons or organizations whose function is to influence procurement contracts, public works agreements, and real property transactions. In general, a "*procurement contract*" is defined as a contract, an agreement, or a subsequent amendment involving an annualized expenditure in excess of \$15,000, but does not include those contracts that by law must be awarded to the lowest responsible bidder or based on the lowest price.

Pursuant to Section II, paragraph 1 of New York State Executive Order 127, the Department is required to obtain identifying information on every person or organization retained, employed, or designated by or on behalf of any Offeror or contractor to attempt to influence the procurement process. An "*attempt to influence the procurement process*" means any attempt to influence any determination of a member, officer or employee of the Department or any other New York State Executive agency with respect to the solicitation, evaluation or award of a procurement contract, or the

preparation of specifications or request for submission of proposals for a procurement contract. The Department also is required to collect information on whether such person or organization has a financial interest in the procurement. "*Financial interest in the procurement*" means that the person or organization (i) owns or exercises direct or indirect control over, or owns a financial interest of more than one (1) percent in, a contractor or other entity that stands to gain or benefit financially from a procurement contract; (ii) receives, expects or attempts to receive compensation, fees, remuneration or other financial gain or benefit from a contractor or other individual or entity that stands to benefit financially from a procurement contract; (iii) is being compensated by, or is a member of, an entity or organization which is receiving, expecting, or attempting to receive compensation, fees, remuneration or other financial gain from a contractor or other individual or entity that stands to benefit financially from a procurement contract; (iv) receives, expects or attempts to receive any other financial gain or benefit as a result from the procurement contract; or (v) is a relative of a person with a financial interest in the procurement as set forth in clauses (i) through (iv) of this paragraph. For purposes of this paragraph, "*relative*" means spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of an individual listed in clauses (i) through (iv) of this paragraph, or of the individual's spouse. This information is required to be disclosed by all Offerors (Exhibit I.C) to this RFP at the time the Offeror submits its bid or proposal to the Department.

Further, pursuant to Section II, paragraph 2 of New York State Executive Order 127, the Department is required to obtain identifying information on every person or organization *subsequently* retained, employed, or designated by or on behalf of an Offeror or contractor to attempt to influence the procurement process. All Offerors and contractors are required to inform the Department of any and all persons or organizations subsequently retained, employed, or designated by or on behalf of the Offeror or contractor before the Department is contacted by such persons or organizations (Exhibit I.C) to this RFP.

## 2. Offeror Disclosure of Prior Non-Responsibility Determinations

New York State Executive Order 127 requires the Department to make a determination of responsibility of the proposed Selected Offeror for a procurement contract before making an award. New York State Executive Order 127 mandates consideration of

whether the proposed Selected Offeror has intentionally provided false or incomplete information under New York State Executive Order 127 within the last five (5) years, and whether the proposed Selected Offeror has failed to timely disclose accurate and complete information or otherwise cooperate in the implementation of New York State Executive Order 127.

All Offerors are required to inform the Department whether any State department, office or division, or any board, commission or bureau thereof, or any public benefit corporation, public authority or commission at least one of whose members has been appointed by the Governor, including the State University of New York and the City University of New York, has made a finding of the Offeror's non-responsibility under New York State Executive Order 127 in the five (5) years preceding the date of the Offeror's submission of its proposal to the Department (Exhibit I.D to this RFP).

Pursuant to Section II, paragraph 6 of New York State Executive Order 127, the Department is precluded from awarding a procurement contract to any person or organization with a prior non-responsibility determination under New York State Executive Order 127 unless the Department makes a finding, on the record, that the award is in the best interests of the State notwithstanding the prior non-responsibility determination. The Department must prepare a statement describing the basis of such determination and include it in its procurement record.

3. Contractor Certification of Compliance with New York State Executive Order 127

New York Executive Order 127 further requires that every procurement contract subject to its provisions contain the Contractor's certification that all information provided by the Contractor to the Department with respect to the Contractor's compliance with New York State Executive Order 127 is complete, true, and accurate. Accordingly, the Selected Offeror will be required to certify at the time of the Agreement's execution, via mandatory certification language included in the Agreement, that all information provided by the Contractor to the Department with respect to the Contractor's compliance with New York State Executive Order 127 is complete, true, and accurate.

**T. MacBride Fair Employment Principles Act and Non-Collusive Bidding Certification**

In accordance with Chapter 807 of the Laws of 1992, Offerors must certify whether they or any individual or legal entity in which the Offeror 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 Offeror have business operations in Northern Ireland. If an Offeror does have business operations in Northern Ireland, they must 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 DCS also requires that Offerors certify that prices in their proposal have been arrived at independently without collusion, consultation, communication or Agreement for the purpose of restricting competition with any other Offeror or competitor. In addition, that unless required by law, the prices quoted in the Offeror's proposal have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly, indirectly, to any other Offeror or to any competitor. Offerors must also certify that no attempt has been made or will be made by the Offeror to induce any person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

An executed copy of the combined MacBride Act statement form and Non-Collusive Bidding Certification (Exhibit I.G) is required to be submitted with an Offeror's proposal.

#### **U. Vendor Responsibility Requirements – State Finance Law Section 163**

##### General Obligations

New York State Finance Law Section 163 requires contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible Offeror." Furthermore, Section 163(9) f requires the Department to make a determination of responsibility of the proposed Contractor prior to making an award.

"Responsibility" encompasses factors including, but not limited to, financial ability to complete the contract, accountability, reliability, skill, sufficiency of capital resources, judgment, integrity, and "moral worth." *Does the Offeror possess the integrity to perform the contract?* Factors to be considered may include, but not be limited to, criminal

indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust and any other investigations, ethical violations, tax delinquencies, debarment by the federal government, or prior determinations of integrity-related non-responsibility of the Offeror. In addition, any litigation, investigation or subpoena in which the Offeror is presently involved in regardless of the venue or whether or not the State of New York is a party, which may materially affect the Offeror's ability to effectively perform, and any present litigation concerning a contract for services similar to that as set forth in this RFP may be considered in this determination. *Has the Offeror performed at acceptable levels on other governmental contracts?* Factors to be considered include, but not limited to, reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc. *Is the Offeror legally capable of performing the contract?* Factors to be considered include, but are not limited to, authority to do business in New York State (under the Business Corporation Law or Not-For-Profit Corporation Law), licensing (i.e., with the Education Department or Department of State), debarment by the State Labor Department due to a prevailing wage violation, etc. *Is the Contractor financially and organizationally capable of performing the contract?* Factors to be considered include, but are not limited to, assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, existence of appropriate accounting and auditing procedures for control of property and funds, etc.

To assist DCS in evaluating the responsibility of prospective Offerors, a completed Vendor Responsibility Questionnaire (Exhibit I.H) must be submitted with the proposal.

## **V. Tax Law Section 5-a (Certification Regarding Sales and Compensating Use Taxes)**

### **1. General Obligations.**

Effective January 1, 2005, Section 5-a of the New York Tax Law requires that any contract entered into by a State agency shall not be valid, effective, or binding against the agency unless that the Contractor, any affiliate of the Contractor, and any sub-Contractor or any affiliate of the sub-Contractor is registered for sales and compensating use tax purposes with the Commissioner of Taxation and Finance under Sections 1034 and 1253 of the Tax Law if the Contractor, any affiliate of the Contractor, any sub-Contractor of the Contractor, or any affiliate of the sub-Contractor makes sales

delivered by any means to locations within the State of tangible personal property or taxable service having a value in excess of three hundred thousand dollars (\$300,000). 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. Further, the statute requires that the Contractor certify prior to the contract's effective date, and periodically thereafter, to the ongoing compliance by the Contractor, its affiliates, its sub-Contractors and the sub-Contractors' affiliates, with the registration and certification requirements.

2. Pre-Contract Certification: Prior to a contract's approval, the Contractor is required to certify in writing, under penalty of perjury, that:

- if the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), the Contractor holds a valid certificate of authority. If the Contractor does not make sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), then the Contractor shall so certify;
- if any affiliate of the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), to the best of the Contractor's knowledge, each such affiliate holds a valid certificate of authority. If the Contractor does not have any affiliates making sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), then the Contractor shall so certify; and
- if any sub-Contractor or any affiliate of the sub-Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable service having a value in excess of three hundred thousand dollars (\$300,000), to the best of the Contractor's knowledge, each such sub-Contractor and affiliate holds

a valid certificate of authority. If there is no sub-Contractor or affiliate of the sub-Contractor making sales delivered by any means to locations within the state of tangible personal property or taxable service having a value in excess or three hundred thousand dollars (\$300,000), then the Contractor shall so certify.

The Contractor's certification, along with true copies, if applicable, of the certificate of authority held by the Contractor and, if applicable, by, each affiliate of the Contractor, each sub-Contractor and each affiliate of the sub-Contractor, shall be incorporated in, and made a part of, the contract.

3. Ongoing Compliance.

a. At the times specified herein during the term of a contract, the Contractor is required to certify in writing, under penalty of perjury, that:

- if the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), the Contractor holds a valid certificate of authority. If the Contractor does not make sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), then the Contractor shall so certify;
  - if any affiliate of the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), to the best of the Contractor's knowledge, each such affiliate holds a valid certificate of authority. If the Contractor does not have any affiliates making sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), then the Contractor shall so certify; and
  - if any sub-Contractor or any affiliate of the sub-Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable service having a value in excess of three hundred thousand dollars (\$300,000), to the best of the Contractor's knowledge, each such sub-Contractor
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and affiliate holds a valid certificate of authority. If there is no sub-Contractor or affiliate of the sub-Contractor making sales delivered by any means to locations within the state of tangible personal property or taxable service having a value in excess or three hundred thousand dollars (\$300,000), then the Contractor shall so certify.

b. The Contractor's certification shall be made:

- in the case of an approved contract having a term of more than one (1) year, annually, by the day prior to the commencement date of the next succeeding year of the contract;
- in the case of an approved contract which authorizes renewal thereof at the conclusion or an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

The Contractor's certification, along with true copies, if applicable, by each affiliate of the Contractor, each sub-Contractor and each affiliate of the sub-Contractor making sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars (\$300,000), shall be incorporated in, and made a part of, the contract.

If, at the times specified in this section, the Contractor fails to make the required certification(s), or if, during the term of the contract, the Department discovers that such certification was false when made, then such failure or false certification shall be a material breach of the contract, and the contract shall be subject to termination if the Department determines that such action is in the best interests of the Department.

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**SECTION III: WORKERS' COMPENSATION DISPUTE RESOLUTION PROGRAM****PART A: Content of Technical Proposal**

No cost data may appear in any part of the Technical Proposal. Each Offeror's Technical Proposal must include separate responses to the following requirements pertaining to substance and general content:

1. An Executive Summary in which the Offeror must describe its understanding of the requirements presented in the RFP, the approach presented, and how the Offeror will accomplish the objectives of the DRP.
2. The Executive Summary must state the name and address of the Offeror's main and branch offices and the name of the individual responsible for negotiating any contract that might result from this RFP.
3. A Statement of Acceptance by the Offeror of the terms and conditions of the Omnibus Procurement Act of 1992.
4. An executed copy of the combined MacBride Act Statement and Non-Collusive Bidding Certification (Exhibit I.G).
5. An affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror due to prior, current, or proposed contracts, engagements, or affiliations.
6. A statement explaining previous experience/exposure that qualifies the Offeror and, if applicable, its sub-Contractors to undertake the functions and activities required by this RFP. Include an attestation that the Offeror is a qualified Offeror which satisfies each of the prerequisites set forth in Section II.F.2 of this RFP and supporting documentation that demonstrates clearly that each of the prerequisites are satisfied.
7. A statement identifying all sub-contractors, if any, that the Offeror will be sub-contracting with to provide any of the services required under this RFP and a brief description of such services to be provided by each sub-contractor. Include a description of any current relationships with such sub-Contractor(s) and provide a list of clients that the Offeror and sub-Contractor(s) are currently servicing under a formal legal Agreement or

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arrangement and the date when such services began. Indicate whether or not, as of the date of your Proposal, a sub-contract has been executed between you (the Offeror) and such sub-Contractor(s) for services to be provided by such sub-Contractor(s) relating to this RFP. In those cases where an executed sub-contract does not exist as of the date of your Proposal, indicate when the sub-contract would be finalized to perform the services set forth in the Proposal in compliance with the RFP, assuming you (the Offeror) are selected as a result of this RFP.

8. A list, for purpose of reference checks, of three (3) current and three (3) former clients for which the Offeror is supplying or has supplied services similar to those required under the Dispute Resolution Program as described in this RFP. At least two (2) of the former and at least two (2) of the current clients should be clients which the Offeror and sub-Contractor(s), if any, have served under a formal legal Agreement or arrangement. The Offeror should also indicate what participation, if any, each staff person proposed for this project had in the referenced services.
  9. The Offeror's most recent annual audited financial statement, the most recent quarterly financial statement, and the 2003 statutory Annual Statement, and the most recent quarterly statutory financial statement. Provide complete sets of statements – not just excerpts. Additionally, for each sub-Contractor with whom the Offeror may be sub-contracting to provide any of the program services required under this RFP, the most recent annual audited statement and the most recent quarterly statement.
  10. A description of any litigation in which the Offeror is presently involved. Offerors must detail any present litigation, regardless of the venue or whether or not the State of New York is a party, which may materially affect the Offeror's ability to effectively perform, and any present litigation concerning a contract for services similar to that as set forth in this RFP.
  11. Completed Vendor Responsibility Questionnaire (Exhibit I.H). A Vendor Responsibility Questionnaire must be completed by the Offeror, and by all of the Offerors sub-Contractors. Please refer to Section II.U of the RFP.
  12. A completed Work Force Employment Utilization Report Service and/or Consultant Firms (Exhibit I.I), refer to Section II.Q of the RFP.
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13. A narrative description addressing each of the requirements and questions contained in Section III, Part B of the RFP, Offeror Responsibilities/Questionnaire.
14. Completed Biographical Sketch forms (Exhibit I.J) for, at a minimum, those individuals identified by the Offeror in its response to Section III.B.1.b.1 (c through e) and III.B.2.b.2.
15. Completed Procurement Disclosure –Offeror/Contractor Disclosure of Contacts forms (Exhibits I.C and I.D).

#### **PART B: Offeror's Responsibilities/Questionnaire**

The DCS seeks to award a contract through this RFP process to a qualified organization to review conflicting medical opinions (Appeals) regarding an Employee's degree of disability.

The purpose of this section of the RFP is twofold: first, to describe the duties and responsibilities required of the selected Offeror by DCS and second, to pose questions concerning those duties and responsibilities. The Offeror's Proposal must contain responses to each of these questions in the order presented. In addition to its response to a particular question, an Offeror may provide additional information or recommendations that it believes to be relevant for consideration in the State's determination of best value to the State and the award of this contract. DCS is seeking a Contractor to perform services for only the Dispute Resolution Program as described in the section below. **This is not a RFP to administer the Medical Evaluation Program (MEP).** A description of the MEP is included so that Offerors have a complete understanding of the negotiated Workers' Compensation benefit.

*Note:* Numbers or statistics which may appear in Exhibits referenced throughout this RFP are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of future performance or participation.

The selected Offeror shall be responsible for:

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## 1. Program Implementation

### a. Duties and Responsibilities:

The selected Offeror must undertake and complete all implementation activities by October 31, 2005, so that the Program is fully operational no later than November 1, 2005. Such implementation activities include, but are not limited to:

- Development and approval by DCS of an Appeal Request Form which will be used by covered Employees and their Treating Physicians to file an Appeal under the DRP, with such form subject to approval by DCS;
- Distribution of the Appeal Request Form to State Agencies with Employees covered by the DRP. Filing instructions, including critical Appeal eligibility and filing deadlines shall accompany the Appeal Request Form;
- Establishment of a Network of Dispute Resolution Program Reviewing Physicians to conduct the review of medical documentation; and
- Staff as may be needed to receive, acknowledge, and track a filed Appeal, initiate the Program Review process, and report the outcome of the Reviews within the specified Program Review Period.

### b. Questions:

1. Provide a fully detailed description of the Offeror's overall implementation plan to deliver the Program beginning November 1, 2005. This information must be in narrative and diagram form, reflective of and responsive to, the Program elements described in the RFP and include, but not be limited to:
  - a. A detailed description of the tasks to be completed and their respective completion dates;
  - b. The party responsible for each task (i.e., Contractor, DCS);
  - c. Identification of the person(s) to be responsible for overall management of the implementation of the Program;

- d. Identification of other key professional personnel involved in the implementation;
  - e. Identification of any individuals noted above whose role and whose time dedicated to the Program will change after October 31, 2005; and
  - f. Describe the procedures you will have in place to ensure that the timeframe, notification and tracking requirements necessitated by this review process are met.
- c. Implementation Guarantees and Penalties:
1. The Offeror guarantees that implementation activities outlined below will be met.
    - a. The Offeror guarantees that all implementation activities will be completed no later than October 31, 2005.
    - b. The Offeror guarantees that it will be prepared to receive, acknowledge and track a DRP Appeal received on and after November 1, 2005.
  2. Propose a financial penalty, expressed in specific dollar amounts, for failure to meet the guarantees using the following format:
    - a. The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_per day for each day implementation activities have not been completed after October 31, 2005.
    - b. The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_ per day for each Appeal it is unable to receive, acknowledge and track on and after November 1, 2005.

## **2. Program Administration**

- a. Duties and Responsibilities:
  1. The selected Offeror shall maintain an organization sufficient to administer, manage and oversee all aspects of the Program as specified elsewhere in the RFP and related Exhibits. The selected Offeror's account team shall be

sufficiently staffed to provide timely responses to DCS administrative concerns and inquiries. The selected Offeror must dedicate a unit that will be specifically assigned to administer the Appeals filed under the DRP.

b. Questions:

1. Describe your experience in administering a Program similar in size and scope to that required by this RFP.
2. Provide a flowchart that describes the operation of the Program and the unit to which the review process will be assigned. Include the names, titles and qualifications of the individuals, including the Medical Director, responsible and a timetable for completion of Program Reviews. The flow chart should include steps followed in the Program Review process.

**3. Network of Dispute Resolution Program Reviewing Physicians**

a. Duties and Responsibilities:

1. The selected Offeror shall be responsible for establishing and maintaining a network of Program Reviewing Physicians (PRPs) that meets the following requirements:
  - PRPs must have specialized expertise in the treatment and/or diagnosis of work-related injuries/illnesses.
  - PRPs must be certified specialists in the appropriate field when that certification is necessary for making and evaluating degree of disability determinations.
  - PRPs must be authorized by the New York State Workers' Compensation Board (WCB) as treating or consulting physicians pursuant to Workers' Compensation Law.
  - The network must have no less than three (3) certified physicians from each of the following specialties: Cardiologist, Chiropractor, Dentist-Oral Surgeon, Dermatologist, Gastroenterologist, Gynecologist, Hematologist, Internist, Neurologist, Orthopedist, Otorhinolaryngologist, Pathologist, Physiatrist,

Podiatrist, Psychiatrist, Psychologist, Radiologist, Hand Surgeon, Neuro-Surgeon, Plastic Surgeon, Vascular Surgeon and Urologist.

- The selected Offeror shall be responsible for contracting with PRPs. This includes negotiating fees and making direct payments to PRPs for services rendered as a part of this Program. PRPs shall not look to DCS for payment of any kind.
  - PRPs shall be responsible for testifying before the Board when appropriate and necessary.
2. The Offeror shall be responsible for assuring that the PRP is not the Staff, Treating or the Evaluating Physician as defined in this RFP.
  3. The PRP (or designated Program Reviewer) must complete the Program Review within the appropriate Program Review Period.
  4. The PRP's determination regarding an Employee's degree of disability is based on the review of the Employee's medical documentation and other appropriate documentation, which may include laboratory reports and X-rays and Treating and Evaluating Physicians' reports.
  5. All medical information received from the Treating Physician, the Evaluating Physician, and the Fund must be maintained in a confidential and secure manner.
  6. The Offeror shall be responsible for providing a written report of the Program Review findings to the Employee, the Employing Agency, the Treating Physician, the Evaluating Physician, the appropriate Union, and the Fund within the required Program Review Period. The report must include an Employee identifier and a statement in support of either the Treating or Evaluating Physician's degree of disability determination.



## b. Questions:

1. Describe your current network and the network that you would establish for purposes of this Program. Provide a list of physician specialties and the number of physicians in each specialty represented in your current network. Please note whether each physician is authorized by the New York State Workers' Compensation Board. Indicate those with experience in treating/diagnosing work-related injuries/illnesses.
2. If you do not currently have a network of physicians that meets the minimum requirements as described in Section III.B.3.a of this RFP, provide a detailed description of your plan to develop or expand your existing network to meet the specified minimum requirements by the October 31, 2005 implementation date. This plan should include timetables and the number and type of additional physician specialties to be recruited for the network.
3. Describe your process for profiling PRPs and measuring outcomes. Such outcomes include, but are not limited to, disposition of Appeals, timely medical report filing and clarity and thoroughness of reports filed.
4. Describe the medical guidelines that will be used by PRPs in evaluating injuries/illnesses. These guidelines must comply with appropriate New York State laws, rules and regulations. Describe the frequency of and process you use to update these guidelines.
5. Outline the process you will use to ensure that the PRP is not the Staff, Treating or Evaluating Physician and that PRPs complete their Program Reviews within the required timeframe(s).
6. Describe how you will ensure that the PRP's determination regarding the Employee's degree of disability is based on the review of the Employee's medical documentation and other appropriate documentation that may include laboratory reports and x-rays and Treating and Evaluating Physicians' reports.

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7. Outline the steps you will follow to ensure that all medical information received from the Treating Physician, the Evaluating Physician and the Fund is maintained in a confidential and secure manner.
  8. Provide a sample of the report format that you propose to use to document the Program Review findings to the Employee, the Employing Agency, the Treating Physician, the Evaluating Physician, the appropriate Union and the Fund. The report must include a statement in support of either the Treating or Evaluating Physician's degree of disability determination.
  9. Describe the process you currently or would propose to use to contract with PRPs on the DRP reviewing panel. Include a description of how you will ensure that your proposed review panel meets the certification and credentialing requirements of this RFP.
  10. Describe the criteria you use to select the physicians that would act as PRPs.
  11. Explain whether the PRPs are employees or independent contractors. If they are independent contractors, provide a sample copy of your physician contract.
- c. DRP Reviewing Physician Panel Guarantee and Penalties:
1. The Offeror must guarantee that the DRP Physician Reviewing Panel meets the criteria in Section III.B.3.a and is established and available to perform reviews and other needed program related duties/services on and after November 1, 2005.
  2. Propose a financial penalty, expressed in specific dollar amounts, for failure to meet the guarantee using the following format:
    - a. The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_ per day for each day that it fails to establish a Physician Reviewing Panel in accordance with the requirements of Section III.B.3.a.
    - b. The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_ for each day that a PRP and/or designated reviewer is unable to complete a review and/or a required function on and after November 1, 2005.

- c. The Contractor shall pay to DCS a penalty of \$ \_\_\_\_\_ per day for each day that the Contractor does not issue a decision within the required Program Review Period.

#### **4. Program Communications**

a. Duties and Responsibilities:

The Offeror shall be responsible for the communication needs of the Program which shall include, at a minimum:

1. Mailing services, telephone and facsimile capabilities and other electronic media to be used for the secure transfer and receipt of information between the Contractor and the Employee, Treating Physician, Evaluating Physician, Employing Agency, appropriate Union and the Fund.
2. Working with the DCS to design and develop communication material for Employees covered by the Workers' Compensation DRP to include, but not be limited to:
  - The Appeal Request Form which must be used by eligible Employees to file an Appeal under the DRP;
  - A process for distributing the DRP information and Appeal Request Form (one for each of the 2 groups described in this RFP);
  - A brochure or other form of informational material that describes the details of the DRP, including but not limited to, the procedures and eligibility criteria for filing an Appeal; filing instructions and Program Review Period deadlines; and
  - Other information or material proposed by the Offeror to assure the effective implementation and delivery of the required Program Services.
3. Designing, producing, and distributing an Appeal Request Form, subject to the approval of the DCS, which will be available to Employees through their Employing Agencies. The Appeal Request Form should contain at a minimum,
  - a) Employee information including: the Employee's name, home address,

telephone number, date and brief description of the accident or illness, the Employing Agency, the Employee's work address, the date of Appeal; b) Medical information including: the Treating Physician's name, address, telephone number, determination of the Employee's level of disability, diagnosis, treatment plan, and prognosis and the Evaluating Physician's name, address, telephone number and determination of the Employee's level of disability.

b. Questions:

1. Describe the processes, including any electronic media or other technology, you will use for the confidential and secure transfer and receipt of information between the Contractor and the Treating Physician, Evaluating Physician, Employing Agency, appropriate Union and the Fund.
2. Outline the approach you recommend for working with the DCS to design and transmit required communication materials for the DRP. Include samples of materials that you use with other customers or, if no appropriate similar samples are available, provide a sample outline of documents for potential usage in the Program.
3. Provide an outline or sample of the required Appeal Request Form that will be made available to Employees through the Employing Agency.

c. Program Communications Guarantee and Penalty:

1. The Offeror guarantees that the Appeal communication information and the Appeal Request Form are in place and available on and after November 1, 2005 to Employees, Employing Agencies, Treating Physicians, Evaluating Physicians, appropriate Unions and the Fund.
2. Propose a financial penalty, expressed in specific dollar amounts, for failure to meet the guarantee using the following format:

The Contractor shall pay the DCS a penalty of \$\_\_\_\_\_ for the failure to complete any review due to the unavailability of needed notifications and/or the required Appeal Request Form.

**5. Maintenance and Disclosure of Employee Records and Reporting**

a. Duties and Responsibilities:

The selected Offeror shall be responsible for the following:

1. Proper Program control and accounting of the Appeals and related Employee records. Program reporting requirements, including monthly reports indicating the number of Appeals and disposition of each. The format and due date of such reports shall be agreed upon by the Parties.
2. Maintaining a medical case record for each Appeal, which shall include but not be limited to the Treating Physician's and the Evaluating Physician's reports, and the selected Offeror's determination. In cases where the Appeal has not been received by the selected Offeror within 90 days of its receipt of information used to establish the medical case record, the selected Offeror shall destroy, in a confidential and secure manner, all CI, including and not limited to medical case records and all other records related to the case. If such destruction is not feasible, the Contractor shall limit further uses and disclosures of such CI to those purposes that make the return or destruction of the CI infeasible.
3. The selected Offeror shall use appropriate, documented safeguards to prevent the use or disclosure of DCS' CI otherwise than as provided for by this Agreement. The selected Offeror shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the selected Offeror's operations and the nature and scope of its activities.
4. The selected Offeror shall be responsible for producing a monthly report containing, at a minimum, the number of Appeals received, the number of Program Reviews completed, and the outcome of each Program Review. The details of the report must reflect the bargaining unit and other information as may be required by the DCS.
5. In response to the specific requests from the State, the selected Offeror must be prepared to produce ad hoc reports to measure the critical elements of the DRP.

b. Questions:

1. Outline the kinds of reports that you will be prepared to provide to DCS to monitor Appeals and the disposition of each case. Describe the components of the required monthly report.
2. Describe in detail the system you will use to record and track medical records and Appeals, including required Treating Physician and Evaluating Physician reports. Include a description of the procedures you have in place to ensure confidentiality of records.

c. Reporting Guarantee and Penalty:

1. The Offeror guarantees that it will submit monthly reports indicating the number of Appeals and disposition of each to the DCS in a format and due date agreed upon by the Parties.
2. Propose a financial penalty, expressed in specific dollar amounts, for failure to meet the guarantee using the following format:

The Contractor shall pay the DCS a penalty of \$\_\_\_\_\_ per day for the failure to transmit a monthly report in the format and on the due date agreed upon by the Parties.

**SECTION IV: COST PROPOSAL REQUIREMENTS****A. Requirements**

1. The Offeror's Cost Proposal shall be a proposed fee to be paid by the Offeror for each Valid Appeal reviewed by the Offeror. A Valid Appeal is defined as one, which contains all medical information needed by the Program Reviewing Physician to complete the review. All costs associated with the requirements of this RFP must be incorporated into the Offeror's proposed review fee as quoted by the Offeror in Exhibit IV.A.
2. The Offeror shall assume that the number of reviews to be completed under the agreement shall be consistent with the DRP Summary presented in Exhibit III.A. However, the DCS cannot and shall not guarantee the number of Appeals under the Agreement resulting for this RFP.
3. Payment under the contract resulting from this RFP will be based on the actual monthly Appeal volume times the quoted review fee. The selected Offeror shall submit the bill that meets the State's requirements for a given month to the DCS within fifteen (15) days following the end of the month. This bill shall be processed within thirty (30) days of receipt of the bill.

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## **SECTION V: EVALUATION AND SELECTION CRITERIA**

The DCS intends to select that responsive/responsible Offeror whose Proposal offers the best value to the DCS and the State, as specified in the following evaluation criteria, for the purpose of entering into negotiations for the execution of a contract.

The Offeror's Technical and Cost Proposals will be separately evaluated and scored as described below.

### **A. Technical Score**

Each Offeror's ability to deliver the Program Services described in Section III Part B of this RFP will be evaluated and scored, based on a weighted point system.<sup>1</sup> The evaluation of the Offeror's Technical Proposal will be based on that Offeror's written Technical Proposal; responses to clarifying questions, if any; information obtained through reference checks, including the DCS's experience with the Offeror or its proposed sub-Contractors, if any; and, as deemed necessary by DCS, oral presentation(s) and/or site visit(s) conducted to amplify and/or clarify that Offeror's proposed Technical Proposal. The Offeror's commitment to meeting the standards it outlines in its proposal will be verified by reviewing responses to related Performance Guarantee questions and reviewing the Offeror's proposed penalty for its failure to meet each guarantee.

The evaluation criteria and relative point value for each section follows:

1. Program Implementation - 10% of Total Technical Score

The Offeror will be rated on the completeness, reasonableness and appropriateness of its implementation plan, its willingness and ability to meet completion dates, and on the qualifications and experience of its personnel responsible for the oversight and management of the implementation.

2. Program Administration - 30% of Total Technical Score

The Offeror will be rated on its prior experience and/or capabilities of administering a program similar in size and scope to the program requirements of RFP and the adequacy of its staffing to meet requirements of the RFP.



3. Network of Dispute Resolution Program Reviewing Physicians – 40% of Total Technical Score

The Offeror will be rated on the overall quality and comprehensiveness of its Physician Review Panel and its ability to administer the program requirements of the Appeal process in a timely manner.

4. Program Communications – 15% of Total Technical Score

The Offeror will be rated on the adequacy of its Communications Plan, including, but not limited to, quality of written material and proposed method of distribution and fulfillment.

5. Maintenance and Disclosure of Employee Records and Reporting - 5% of Total Technical Score

The Offeror will be rated on its ability to produce correct, understandable, and timely reports as required in the RFP.

Offerors technical proposals will be evaluated as follows:

**POOR**

- The Offeror misinterpreted or misunderstood the question; or the Offeror does not answer the question/criteria in a clear manner or the Offeror does not answer the question; or the Offeror does not meet the criteria.

**FAIR**

- The Offeror's answer is minimal; or the answer is very general and does not fully address the question; or the Offeror meets only some of the criteria.

**MEETS CRITERIA**

- The Offeror meets but does not exceed the criteria. The services described indicate that the Offeror will meet the program's minimum needs.

**GOOD**

- The Offeror exceeds the criteria. The services described indicate that the Offeror will exceed the program's minimum needs. The Offeror demonstrates some innovative features not shown in typical proposals.

**EXCELLENT**

- The Offeror far exceeds the criteria. The services described indicate that the Offeror will provide very high quality services and is very pro-active and innovative.

**Performance Guarantees**

The Offeror's commitment to meet the standards it outlines in its proposal will be verified by reviewing responses to related Performance Guarantee questions and reviewing the Offeror's proposed penalty for its failure to meet each guarantee.

a. Performance Guarantees Suggested Penalties

1. The suggested penalty for each performance guarantee is \$100 per occurrence (i.e., each day of lateness is an occurrence) with the exception of the following performance guarantees: Implementation - III.B.1.c 2.a and 2.b, \$500 per day; Network of Dispute Resolution Program Reviewing Physicians - III.B.3.c.2.c, \$500 per review; Program Communications - III.B.1.b.4.c.2, \$500 per review.
2. Offerors who meet the standard and propose the suggested penalty for a performance guarantee will be rated 'meets criteria'.
3. Offeror's may propose performance guarantees that exceed the minimum guarantees in this RFP.

- b. Proposed Performance Guarantees within the respective technical areas will be evaluated using the following criteria:

**EXCELLENT**

- The proposal's performance guarantee exceeds the minimum guarantee required by this RFP; and

- The proposal's penalty structure demonstrates a strong or very strong commitment by the Offeror to achieving the performance guarantee.

**GOOD**

- The proposal's performance standard equals or exceeds the minimum guarantee required by this RFP; and
- The proposal's penalty demonstrates a commitment by the Offeror to achieve the performance guarantee.

**MEETS CRITERIA**

- The proposal's performance guarantee equals the minimum guarantee required by this RFP; and
- The proposal's penalty demonstrates a vague commitment by the Offeror to achieving the proposed guarantee.

**FAIR**

- The proposal's performance guarantee equals the minimum guarantee required by this RFP; and
- The proposal's penalty demonstrates a weak commitment by the Offeror to achieving the proposed guarantee.

**POOR**

- The proposal's performance guarantee is below the minimum performance guarantee required by this RFP, regardless of the level of penalty proposed by the Offeror; and/or
- The Offeror fails to provide a penalty as part of its performance guarantee, regardless of the level of performance it pledges.

The Technical Scores will be calculated and a Technical Score Evaluation Band will be established. This band will be based on the highest Technical Score achieved. It will contain the Offeror with the highest Technical Score and any other Offeror whose Technical Score is within 20% of the highest Technical Score.

DCS, and others deemed appropriate by DCS, will evaluate the Cost Proposal of all Offerors whose Technical Score falls within the Technical Score Evaluation Band. Those Offerors whose Technical Score places them outside of the Technical Score Evaluation Band will be removed from further consideration.

**B. Cost Score**

Each Offeror's evaluated Cost Proposal shall receive a single Cost Score. To arrive at the Cost Score, DCS will multiply the proposed review fees times a normalized number of reviews for each year to arrive at a projected annual cost per year. The projected annual cost shall be summed to determine a five (5) year cost. This projected five (5) year cost shall be converted into a Cost Score using a pre-established formula such that the proposal with the lowest projected five (5) year cost shall receive the score value of the highest technical score. Other evaluated Cost Proposals will receive a proportionately calculated Cost Score based on their respective projected five (5) year cost.

**C. Total Combined Score**

To arrive at a Total Combined Score, DCS will combine the Offeror's Technical Score and Cost Score using the following formula:

Technical Score times	30%
Plus: Cost Score times	70%
Total Combined Score	100%

A Final Combined Score Band will be established and shall include the Offeror with the highest Total Combined Score and all Offerors whose Total Combined Score is within twenty percent (20%) of the highest Total Combined Score.

**D. Best Value Determination**

DCS shall select and enter into negotiations for the purpose of executing a contract with the responsible Offeror in the Final Combined Score Band that represents the lowest cost/highest cost score based on the evaluation criteria. The Offeror selected to enter into negotiations with DCS must agree to execute a contract that includes substantially the terms set forth in Section VI, Contract Provisions, of this RFP.

Please note that the terms in Appendix A, Standard Clauses for All New York State Contracts, and Appendix B, Standard Clause for all DCS Contracts, are not subject to negotiation.

If DCS determines that contract negotiations between DCS and the selected Offeror are unsuccessful, DCS may invite the Offeror within the Total Combined Score Band that has the next lowest cost to enter into negotiations for purposes of executing a contract.

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**SECTION VI: CONTRACT PROVISIONS**

A contract will be executed between the DCS and the selected Offeror which, except for Appendix A, Standard Clauses for All New York State Contracts, substantially contains the following terms and conditions.

**ARTICLE I. DEFINITION OF TERMS**

- 1.1.0 **Appeal** means a request, with required supporting documentation from an Employee's Treating Physician to the Contractor for review of conflicting medical opinions regarding an Employee's degree of disability.
- 1.2.0 **Appeal Period for Security Services, Security Supervisors and Agency Law Enforcement Services Units' Employees** means three (3) Business Days from the day the Employing Agency notifies the Employee to return to work based on the Evaluating Physician's determination. If the Employee's notification to return to work *occurs prior to noon*, that day is the first day of the Appeal period. If such notification occurs at noon, after noon or on a non-Business Day, the next Business Day is the first day of the Appeal period.
- 1.3.0 **Appeal Period for State Police Supervisors' and Bureau of Criminal Investigators' Units and Management/Confidential Group** means fifteen (15) Business Days from the day the Employing Agency notifies the Employee to return to work based on the Evaluating Physician's determination. If the Employee's notification to return to work occurs prior to noon, that day is the first day of the Appeal period. If such notification *occurs at noon, after noon* or on a non-Business Day, the next Business Day is the first day of the Appeal period.
- 1.4.0 **Appeal Request Form** means a form designed by the Contractor and approved by the DCS, which must be used by the Treating Physician to file an Appeal and, when properly completed, provides sufficient information for the Contractor to perform a Program Review.
- 1.5.0 **Board** means the Workers' Compensation Board, which is the State agency responsible for interpreting the Workers' Compensation Law and making final determinations on the

occupational nature of an employee's injuries and amount of associated indemnity benefits.

- 1.6.0 **Business Days** means every Monday through Friday, except for those days which have been designated as business holidays by the Contractor and approved as such by DCS prior to each January 1<sup>st</sup>.
- 1.7.0 **Confidential Information (CI)** means any information, including demographic information collected from an Employee, that relates to the past, present, or future physical or mental health or condition of an Employee, to the provision of medical or related health care to an Employee, that identifies the Employee, or with respect to which there is a reasonable basis to believe that the information can be used to identify the Employee.
- 1.8.0 **Contractor** means the firm under contract with the NYS DCS to provide the required Workers' Compensation Dispute Resolution Program (DRP) medical review services as required by this Agreement.
- 1.9.0 **Days** means Calendar Days unless otherwise noted.
- 1.10.0 **DCS** means the New York State Department of Civil Service.
- 1.11.0 **Dispute Resolution Program (DRP)** means the New York State program that provides covered Employees an opportunity for a neutral third party medical review of conflicting medical opinions (Appeals) regarding an Employee's degree of disability.
- 1.12.0 **Employee** means a person who is appointed to one of the Employing Agencies in a position contained within the: Security Services Unit (represented by NYSCOPBA), Security Supervisors Unit (represented by Council 82, AFSCME, AFL-CIO), or the Agency Law Enforcement Services Unit (represented by Council 82, AFSCME, AFL-CIO). Employee also means a person who is appointed as a Member of the Division of New York State Police who is in a position contained within the State Police Investigators Unit [represented by the New York State Police Investigators' Association ('NYSPIA') Local 4, I.U.P.A., AFL-CIO], the State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)], or who is designated

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Management/Confidential.

- 1.13.0 Employing Agency** means one of the organizational entities of the State of New York list. which employs persons eligible to participate in the DRP.
- 1.14.0 ET** means prevailing Eastern Time.
- 1.15.0 Evaluating Physician** means the medical consultant employed by the State Insurance Fund (Evaluating Physician) who determines the Employee's degree of disability, upon which management decides if the Employee should return to work in light or full duty capacity and/or the physician employed by the Division of New York State Police (Staff Physician) who determines the Employee's degree of disability, upon which management decides if the Employee should return to work in light or full duty capacity.
- 1.16.0 Fund** means the State Insurance Fund, the State agency that acts as the State's workers' compensation insurance carrier.
- 1.17.0 Labor Agreement(s)** means the negotiated collective bargaining agreements between the State and the Security Services Unit (represented by NYSCOPBA), and the Security Supervisors Unit (represented by Council 82, AFSCME, AFL-CIO), and the Agency Law Enforcement Services Unit (represented by Council 82, AFSCME, AFL-CIO). For purposes of this Agreement, this term also includes the agreements reached between the State and the State Police Investigators Unit [represented by the NYS Police Investigators Association (NYSPIA), Local 4, I.U.P.A., AFL-CIO] and the State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit (represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)].
- 1.18.0 Light Duty** means that light duty assignments (for all employees not employed by the Division of New York State Police) will be within the Employee's title and at the Employee's work location. In cases where minimum staffing levels have been established, light duty will not be used to affect existing minimum staffing levels.
- 1.19.0 MEP** means the Medical Evaluation Program, which is the voluntary program that provides injured employees an expedited medical consultant examination to determine



an Employee's degree of disability upon which management makes a decision regarding the Employee's assignment to light duty.

- 1.20.0 Modified Duty Assignment** means assignments (for group 2 Employees) to perform administrative duties including, but not limited to: desk duty, records management, inventory control, non-criminal investigations, communications and other tasks not related to patrol functions, field supervision, or active criminal case investigation.
- 1.21.0 Pass Day** means day of the week the Employee is not scheduled to work.
- 1.22.0 Program** means the Dispute Resolution Program.
- 1.23.0 Program Review** means the Contractor's review of the conflicting medical evaluations, which are Appealed by the Employee's Treating Physician.
- 1.24.0 Program Reviewing Physician (PRP)** means a physician licensed and/or registered with the appropriate licensing and/or disciplinary agency, who has been designated by the Contractor to perform the review of medical records, the Treating and Evaluating Physicians' reports, and other documentation necessary to render an opinion, which will support either the Treating or Evaluating Physicians' determination of the Employees' degree of disability. The PRP cannot be the Staff, Treating or Evaluating Physician.
- 1.25.0 Program Review Period for the Security Services, Security Supervisors and Agency Law Enforcement Services Units' Employees** means seven (7) Calendar Days from the day the Contractor receives a Valid Appeal from the Treating Physician.
- 1.26.0 Program Review Period for the Division of New York State Police Employees** means ten (10) Calendar Days from the day the Contractor receives a Valid Appeal from the Treating Physician.
- 1.27.0 Proposal** means both the Offeror's Technical Proposal and Cost Proposal submitted in response to the RFP entitled "Dispute Resolution Program" dated March 10, 2005.
- 1.28.0 RFP** means the Request for Proposal, entitled "Dispute Resolution Program" dated March 10, 2005.

- 1.29.0 **Services** means the Program Services including, but not limited to, the Workers' Compensation Dispute Resolution Program medical review to be provided by the Contractor as required by the Dispute Resolution Program as set forth in this Agreement.
- 1.30.0 **Staff Physician** means the physician(s) employed by the New York State Police.
- 1.31.0 **State** means New York State.
- 1.32.0 **Treating Physician** means the physician chosen by the Employee to provide direct care for his/her disability.
- 1.33.0 **Valid Appeal** means an Appeal filed on behalf of an eligible Employee that contains all medical records and supporting information, including the Appeal Request Form needed by the Program Reviewing Physician, to issue an opinion in support of either the Employee's Treating or Evaluating Physician's medical opinion regarding the eligible Employee's degree of disability.
- 1.34.0 **Work Day** means any day the Employee is scheduled to report to work. Work Days include Saturdays, Sundays and Holidays.

## **ARTICLE II. AGREEMENT DURATION AND AMENDMENTS**

- 2.1.0 This Agreement is for five (5) years commencing on November 1, 2005 and terminating October 31, 2010, subject to the termination provisions contained herein.
- 2.2.0 This Agreement 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.

## **ARTICLE III. DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE**

- 3.1.0 This Agreement consists of:
- 3.1.1 The body of this Agreement (i.e., that portion preceding the signatures of the Parties in execution); and any amendments thereto.

**3.1.2** Appendix A.

**3.1.3** Appendix B.

**3.1.4** The following Exhibits attached and incorporated by reference to the body of the Agreement:

**3.1.4a** Exhibit A, which includes the MacBride Act Statement and the Non-Collusive Bidding Certification; and

**3.1.4b** Exhibit B, the Request for Proposal entitled, "Dispute Resolution Program", dated (March 10, 2005); and

**3.1.4c** Exhibit C, the Offeror's Proposal (Technical and Cost), dated (April 27, 2005); and

**3.1.4d** Exhibit D, "Annual Administrative Fee Schedule".

**3.2.0** In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

**3.2.1** First, Appendix A,

**3.2.2** Second, Appendix B,

**3.2.3** Third, any Amendments to the body of this Agreement;

**3.2.4** Fourth, the body of this Agreement,

**3.2.5** Fifth, Exhibit D, "Annual Administrative Fee Schedule",

**3.2.6** Sixth, Exhibit B - the Request for Proposal entitled, "Dispute Resolution Program", dated March 10, 2005, and

**3.2.7** Seventh, Exhibit C - the Offeror's Proposal (Technical and Cost), dated (April 27, 2005).

3.3.0 The terms, provisions, representations, and warranties contained in this Agreement shall survive performance hereunder.

#### **ARTICLE IV. LEGAL AUTHORITY TO PERFORM**

4.1.0 The Contractor represents that the Contractor possesses the legal authority to perform the tasks of this Agreement in accordance with the terms and conditions of the Agreement.

4.2.0 The Contractor acknowledges that the award of the Agreement is based on the Contractor's representation as a qualified Contractor.

4.3.0 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 performing the tasks 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 tasks are to be performed.

#### **ARTICLE V. PROGRAM SERVICES**

5.1.0 The Contractor must undertake and complete all implementation activities by October 31, 2005, so that the Program is fully operational no later than November 1, 2005. Such implementation activities include, but are not limited to:

- Development and approval by DCS of an Appeal Request Form which will be used by covered Employees and their Treating Physicians to file an Appeal under the DRP, with such form subject to approval by DCS;
- Distribution of the Appeal Request Form to State Agencies with Employees covered by the DRP. Filing instructions, including critical Appeal eligibility and filing deadlines shall accompany the Appeal Request Form;
- Establishment of a Network of Dispute Resolution Program Reviewing Physicians to conduct the review of medical documentation; and

- Staff as may be needed to receive, acknowledge, and track a filed Appeal, initiate the Program Review process, and report the outcome of the Reviews within the specified Program Review Period.

#### **5.2.0 Program Administration**

The Contractor shall maintain an organization sufficient to administer, manage and oversee all aspects of the Program as specified in the Agreement. The Contractor's account team shall be sufficiently staffed to provide timely responses to DCS administrative concerns and inquiries. The Contractor must dedicate a unit that will be specifically assigned to administer the Appeals filed under the DRP.

#### **5.3.0 Network of Dispute Resolution Program Reviewing Physicians**

The Contractor shall be responsible for establishing and maintaining a network of Program Reviewing Physicians (PRPs) that meets the following requirements:

- 5.3.1** PRPs must have specialized expertise in the treatment and/or diagnosis of work-related injuries/illnesses.
- 5.3.2** PRPs must be certified specialists in the appropriate field when that certification is necessary for making and evaluating degree of disability determinations.
- 5.3.3** PRPs must be authorized by the New York State Workers' Compensation Board (WCB) as treating or consulting physicians pursuant to Workers' Compensation Law.
- 5.3.4** The network must have no less than three (3) certified physicians from each of the following specialties: Cardiologist, Chiropractor, Dentist-Oral Surgeon, Dermatologist, Gastroenterologist, Gynecologist, Hematologist, Internist, Neurologist, Orthopedist, Otorhinolaryngologist, Pathologist, Psychiatrist, Podiatrist, Psychiatrist, Psychologist, Radiologist, Hand Surgeon, Neuro-Surgeon, Plastic Surgeon, Vascular Surgeon and Urologist.
- 5.3.5** The Contractor shall be responsible for contracting with PRPs. This includes negotiating fees and making direct payments to PRPs for services rendered as a part of this Program. PRPs shall not look to DCS for payment of any kind.

- 5.3.6** PRPs shall be responsible for testifying before the Board when appropriate and necessary.
- 5.3.7** The Contractor shall be responsible for assuring that the PRP is not the Staff, Treating or Evaluating Physician as defined in this Agreement.
- 5.3.8** The PRP (or designated Program Reviewer) must complete the Program Review within the Program Review Period.
- 5.3.9** The PRP's determination regarding an Employee's degree of disability is based on the review of the Employee's medical documentation and other appropriate documentation, which may include laboratory reports and x-rays, and Treating and Evaluating Physicians' reports.
- 5.3.10** All medical information received from the Treating Physician, the Evaluating Physician, and the Fund must be maintained in a confidential and secure manner.
- 5.3.11** The Contractor shall be responsible for providing a written report of the Program Review findings to the Employee, the Employing Agency, the Treating Physician, the Evaluating Physician, the appropriate Union, and the Fund in accordance with the required Program Review Period. The report must include an Employee identifier and a statement in support of either the Treating or Evaluating Physician's degree of disability determination.

**5.4.0** Program Communications

The Contractor shall be responsible for the communication needs of the Program which shall include at a minimum:

- 5.4.1** Mailing services, telephone and facsimile capabilities and other electronic media to be used for the secure transfer and receipt of information between the Contractor and the Treating Physician, Evaluating Physician, Employing Agency, appropriate Union and the Fund.

- 5.4.2** Working with the DCS to design and develop communication material for Employees covered by the Workers' Compensation DRP to include, but not be limited to:
- 5.4.2a** The Appeal Request Form which must be used by eligible Employees to file an Appeal under the DRP;
  - 5.4.2b** A process for distributing the DRP information and Appeal Request Form (one for each of the 2 groups described in this Agreement);
  - 5.4.2c** A brochure or other form of informational material that describes the details of the DRP, including but not limited to, the procedures and eligibility criteria for filing an Appeal; filing instructions and Program Review Period deadlines; and
  - 5.4.2d** Other information or material proposed by the Contractor to assure the effective implementation and delivery of the required Program Services.
- 5.4.3** Designing, producing, and distributing an Appeal Request Form, subject to the approval of the DCS, which will be available to Employees through their Employing Agencies. The Appeal Request Form should contain at a minimum:
- 5.4.3a** Employee information including: the Employee's name, home address, telephone number, date and brief description of the accident or illness, the Employing Agency, the Employee's work address, the date of Appeal;
  - 5.4.3b** Medical information including: the Treating Physician's name, address, telephone number, determination of the Employee's level of disability, diagnosis, treatment plan, and prognosis and the Evaluating Physician's name, address, telephone number and determination of the Employee's level of disability.

**5.5.0** Maintenance and Disclosure of Employee Records and Reporting

The Contractor shall be responsible for the following:

- 
- 5.5.1** Proper Program control and accounting of the Appeals and related Employee records. Program reporting requirements, including monthly reports indicating the number of Appeals and disposition of each. The format and due date of such reports shall be agreed upon by the Parties.
- 5.5.2** Maintaining a medical case record for each Appeal, which shall include but not be limited to the Treating Physician's and the Evaluating Physician's reports, and the Contractor's determination. In cases where the Appeal has not been received by the Contractor within 90 days of its receipt of information used to establish the medical case record, the Contractor shall destroy, in a confidential and secure manner, all CI, including and not limited to medical case records and all other records related to the case. If such destruction is not feasible, the Contractor shall limit further uses and disclosures of such CI to those purposes that make the return or destruction of the CI infeasible.
- 5.5.3** The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of DCS' CI otherwise than as provided for by this Agreement. 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.
- 5.5.4** The Contractor shall be responsible for producing a monthly report containing, at a minimum, the number of Appeals received, the number of Program Reviews completed, and the outcome of each Program Review. The details of the report must reflect the bargaining unit and other information as may be required by the DCS.
- 5.5.5** In response to the specific requests from the State, the Contractor must be prepared to produce ad hoc reports to measure the critical elements of the DRP.

#### **ARTICLE VI. PERFORMANCE GUARANTEES**

The Parties agree that the following guarantees and the corresponding penalty(ies) for failure to meet each guarantee shall be implemented effective November 1, 2005. The Contractor



acknowledges and agrees that failure to perform the Contractor responsibilities set forth in Article V of the Agreement in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article and/or fails to make any payment(s) of any such penalty(ies) for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in the Agreement.

#### **6.1.0 Implementation Activities**

##### **6.1.1 Implementation Guarantees**

**6.1.1a** The Contractor guarantees that all implementation activities will be completed no later than October 31, 2005.

**6.1.1b** The Contractor guarantees that it will be prepared to receive, acknowledge and track a DRP Appeal received on and after November 1, 2005.

##### **6.1.2 Implementation Penalties**

**6.1.2a** The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_per day for each day implementation activities have not been completed after October 31, 2005.

**6.1.2b** The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_ per day for each Appeal it is unable to receive, acknowledge and track on and after November 1, 2005.

#### **6.2.0 DRP Reviewing Physician Panel**

##### **6.2.1 DRP Reviewing Physician Panel Guarantee**

**6.2.1a** The Contractor guarantees that the DRP Physician Reviewing Panel meets the criteria in Article 5.4 of this Agreement and is established and available to perform reviews and other needed program related duties/services on and after November 1, 2005.

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**6.2.2** DRP Reviewing Physician Panel Penalties

**6.2.2a** The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_ per day for each day that it fails to establish a Physician Reviewing Panel in accordance with the requirements of this Agreement.

**6.2.2b** The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_ per day for each day that a PRP and/or designated reviewer is unable to complete a review and/or a required function on and after November 1, 2005.

**6.2.2c** The Contractor shall pay to DCS a penalty of \$\_\_\_\_\_ per day for each day that the Contractor does not issue a decision within the required Program Review Period.

**6.3.0** Program Communications**6.3.1** Program Communications Guarantee

**6.3.1a** The Contractor guarantees that the Appeal communication information and the Appeal Request Form are in place and available on and after November 1, 2005 to Employees, Employing Agencies, Treating Physicians, Evaluating Physicians, appropriate Union and the Fund.

**6.3.2** Program Communications Penalty

**6.3.2a** The Contractor shall pay the DCS a penalty of \$\_\_\_\_\_ for the failure to complete any review due to the unavailability of needed notifications and/or the required Appeal Request Form.

**6.4.0** Reporting**6.4.1** Reporting Guarantee

**6.4.1a** The Contractor guarantees that it will submit monthly reports indicating the number of Appeals and disposition of each to the DCS in a format and due date agreed upon by the Parties.

**6.4.2 Reporting Penalty**

**6.4.2a** The Contractor shall pay the DCS a penalty of \$\_\_\_\_\_ per day for the failure to transmit a monthly report in the format and on the due date agreed upon by the Parties.

**6.5.0** Waiver of Penalties: If DCS determines that circumstances outside the Contractor's control may have affected the Contractor's ability to meet any of the above requirements, the DCS may waive any or all penalties, which have accrued. Following a review of the circumstances, DCS, at its sole discretion, may waive any or all penalties, which have accrued.

**ARTICLE VII. PAYMENT FOR SERVICES**

- 7.1.0** The DCS agrees to reimburse the Contractor in accordance with the rates, reimbursement levels, procedures and time frames provided for in this Article and in Exhibit D of the Agreement.
- 7.2.0** All reimbursement to the Contractor for services rendered under this Agreement shall be based on a submittal to the DCS by the Contractor of a Standard New York State Voucher in a form acceptable to the DCS and the Comptroller of the State of New York. The Contractor shall bill the DCS monthly, in arrears, for services rendered in accordance with the conditions and requirements of this Agreement.
- 7.3.0** 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 services which are equal to or greater than those services to be provided under this Agreement at more favorable terms, this Agreement shall thereupon be deemed amended to provide the same terms to the DCS.
- 7.4.0** 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 Comptroller of the State of New York.

**ARTICLE VIII. RECORDS AND INFORMATION TO BE FURNISHED**

8.1.0 The DCS shall furnish to the Contractor all information, which the Contractor may reasonably require with regard to any matters pertaining to the Contractor's responsibilities under this Agreement.

**ARTICLE IX. MODIFICATION OF REQUIRED SERVICES**

9.1.0 In the event that laws or regulations enacted by the federal government and/or the State of New York, and/or collective bargaining changes, and/or administrative modifications implemented by DCS, have an impact upon the conduct of this Agreement in such a manner that the DCS determines that any requirements of the Agreement must be revised, the DCS shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.

9.2.0 In the event that the State and its public employee unions enter into collective bargaining agreements that require changes in design elements or requirements of the Agreement, the DCS shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.

9.3.0 To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of services which the Contractor is required to perform or deliver under the Agreement, the Contractor may submit a written request to the DCS to initiate review of the fee(s) received by the Contractor for services provided under the terms of the Agreement, accompanied by appropriate documentation as may be required by the DCS. The DCS reserves the right to review such request within a reasonable period of time and in its sole discretion make a written determination as to whether such request shall be approved or rejected. Should the DCS approve the Contractor's request to modify the fee(s), such approval shall be subject to written amendment and approval by the Office of the State Comptroller.

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**EXHIBITS TO CONTRACT**

- Exhibit A: MacBride Act Statement and Non-Collusive Bidding Certification
- Exhibit B: Request for Proposals entitled, "Dispute Resolution Program"
- Exhibit C: Contractor's Proposal (Technical and Cost)
- Exhibit D: Annual Administrative Fee Schedule

**EXHIBITS TO RFP**

- Exhibit I.A: Directions to State Office Building Campus
- Exhibit I.B: Proposal Submission Requirement Checklist
- Exhibit I.C: Procurement Disclosure-Offeror/Contractor Disclosure of Contacts
- Exhibit I.D: Procurement Disclosure-Offeror Disclosure of Prior Non-Responsibility Determinations
- Exhibit I.E: Redaction Chart
- Exhibit I.F: Tax Law Section 5-a, Certification Regarding Sales and Compensation Use Tax
- Exhibit I.G: MacBride Act Statement and Non-Collusive Bidding Certification
- Exhibit I.H: Vendor Responsibility Questionnaire
- Exhibit I.I: Workforce Employment Utilization Report
- Exhibit I.J: Biographical Sketch
- Exhibit I.K: DRP Prospective Offeror Registration Form
- Exhibit I.L: Equal Employment Opportunity Offeror Certificate of Compliance
  
- Exhibit II.A: New York State Attendance and Leave Manual Policy Bulletin
- Exhibit II.B: New York State Civil Service Law, Section 71 and Rule 5.9
- Exhibit II.C: Collective Bargaining Agreement, Article 14.9
- Exhibit II.D.1: NYS Medical Evaluation Program (Council 82-represented Employees)
- Exhibit II.D.2: NYS Medical Evaluation Program (NYSCOPBA-represented Employees)
- Exhibit II.E.1: Workers' Compensation Dispute Resolution Program (Council 82-represented Employees)
- Exhibit II.E.2: Workers' Compensation Dispute Resolution Program (NYSCOPBA-represented Employees)
- Exhibit II.F: The State Police Administrative Manual
- Exhibit II.G: Overview of DRP for NYS Division of State Police Employees
  
- Exhibit III.A: Dispute Resolution Program Summary
  
- Exhibit IV.A: Dispute Resolution Program Cost Proposal

## DIRECTIONS TO STATE OFFICE BUILDING CAMPUS

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### FROM THRUWAY EXIT 24:

1. From Toll Booths, continue straight ahead to I-90, following signs to Albany.
2. Leave I-90 at Exit 4 (sign says "Slingerlands") which will put you on Route 85. (The State Office exits begin almost immediately after you get on Route 85) Leave Route 85 at the **SECOND** exit marked "**State Offices**" -- **NOT** the first exit marked "Washington Ave/State Offices. Once inside the Campus roadway, you may refer to a "You Are Here" directory map (located on the right-hand side of the roadway) for guidance if need be.
3. You **MUST** park in **LOT D**; all other areas are permit parking only and tow-away zones.
4. From Lot D, it is only a short walk to Building 1.

### FROM I-90 WEST

1. Follow steps 2–4 above.

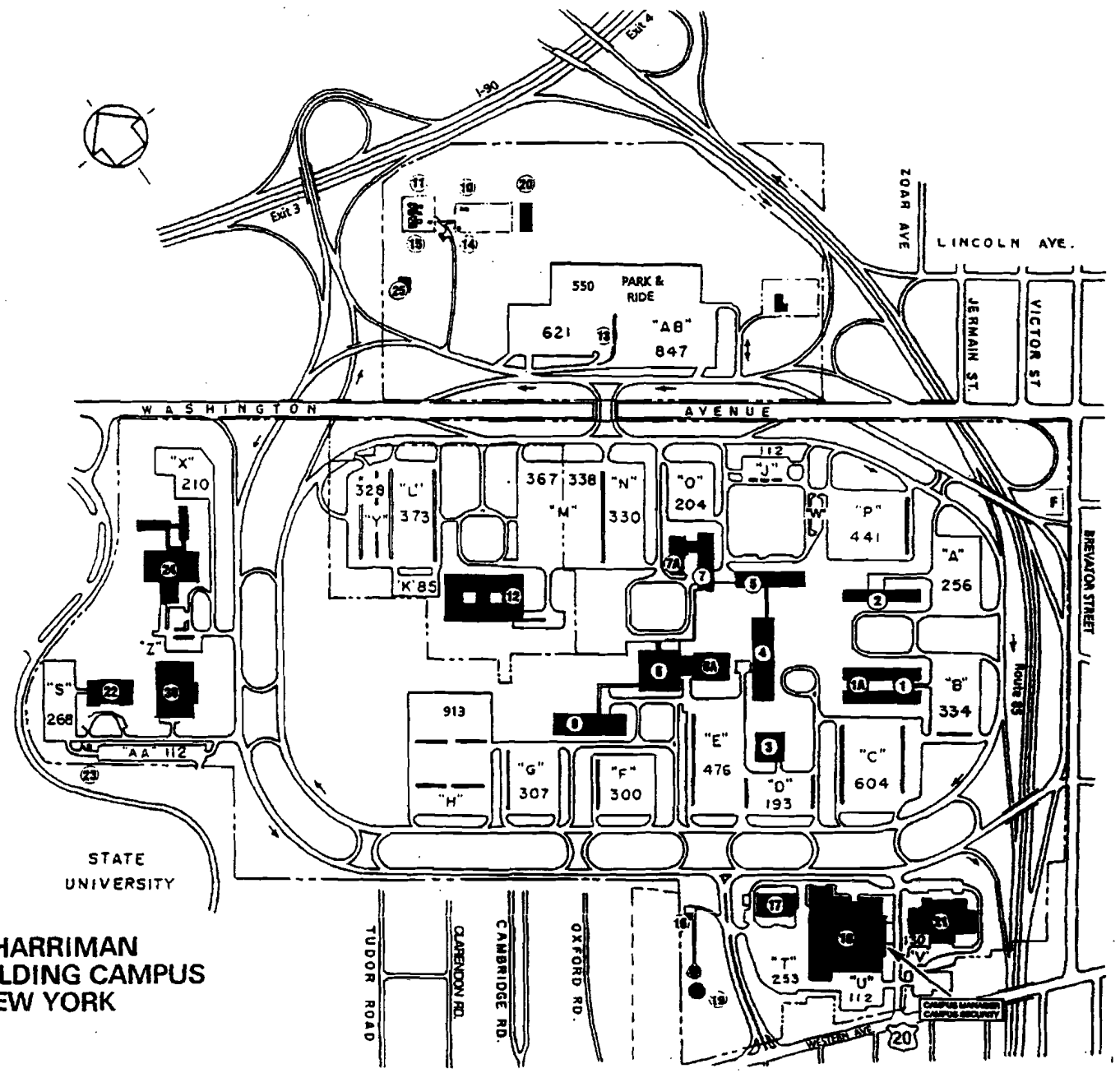
### FROM ALBANY COUNTY AIRPORT

1. Get on Northway (I-87) southbound.
2. Leave Northway at Exit 1E, following signs to Albany. This exit will put you on I-90.
3. Follow steps 2-4 above.

BUILDING INDEX	
NO.	NAME
1-1A	CIVIL SERVICE BUILDING
2	CORRECTIONAL SERVICES
3	CAFETERIA - CREDIT UNION
4	TRANSPORTATION - DAYCARE
5	TRANSPORTATION, ADM. & ENG.
7-7A	LABORATORIES - TRANSP. - AG & MARKET
8-8A	TAXATION & FINANCE
9	TAXATION & FINANCE BUILDING
10	VOLATILE STORAGE BUILDING
11	ELECTRIC SUBSTATION
12	DEPT. OF LABOR - DAYCARE
13	BUS SHELTER
14	SALT STORAGE BUILDING & YARD
15	STORAGE BUILDING
16	WATER SUPPLY PUMPING STATION
17	HEATING & REFRIGERATION PLANT
18	OGS CAMPUS MANAGER - SECURITY - CPU/GRAPHICS - SURPLUS PROP.
19	WATER STORAGE RESERVOIRS
20	STORAGE
21	RECORD CENTER BUILDING
22	STATE POLICE - STATE EMERG. MGMT. OFF.
23	STORAGE
24	STATE POLICE ACADEMY
25	ENVIRONMENTAL CONSERVATION
30	STATE POLICE FORENSIC INV. CENTER

F FIREHOUSE

0 200 400 600  
SCALE IN FT.



STATE UNIVERSITY

W. AVERELL HARRIMAN  
STATE OFFICE BUILDING CAMPUS  
ALBANY, NEW YORK



**PROPOSAL SUBMISSION REQUIREMENT CHECKLIST**

Please indicate by checkmark that your Proposal meets each of the following submission requirements:

\_\_\_\_\_ **TIMELY SUBMISSION:** Proposal submitted to assure receipt by DCS no later than 12:00 PM ET on the Proposal Due Date as indicated in RFP Section II. F.1.

\_\_\_\_\_ **QUALIFIED OFFEROR:** Proposal submitted by a qualified Offeror as defined in RFP Section II. F.2 to include the following:

- \_\_\_\_\_ a. The Offeror must possess the legal capacity to enter into a contract with the President of the New York State Civil Service Commission ("Commissioner")
- \_\_\_\_\_ b. The Offeror's principal place of business is not located in a state that penalizes New York State vendors, nor will the goods or services offered be substantially produced or performed in such a state (refer to Section II.O)
- \_\_\_\_\_ c. The Offeror, if awarded the contract resulting from this Request for Proposals, must agree to complete Exhibit II.F to comply with Section 5-a of the Tax Law
- \_\_\_\_\_ d. The Offeror must have a panel of physicians with at least one (1) representative from each of the specialties delineated in Section 2.F.d of the RFP

\_\_\_\_\_ **TRANSMITTAL LETTERS:** Transmittal letters meet requirements stated in RFP Section II. F. 3. To include the following:

**TECHNICAL PROPOSAL:**

- \_\_\_\_\_ a. Official signature (including one original)
- \_\_\_\_\_ b. Agreement to satisfy RFP Section II.F. (a-d)
- \_\_\_\_\_ c. Period of time Proposal valid
- \_\_\_\_\_ d. Acceptance of terms of RFP Sections III and VI
- \_\_\_\_\_ e. Acceptance of draft contract terms, Section VI; Appendices A and B
- \_\_\_\_\_ e. Affirmative statement agreeing to provisions of Tax Law, Section 5-a (Exhibit I.F)

**COST PROPOSAL:**

- \_\_\_\_\_ a. Official signature (including one original)
- \_\_\_\_\_ b. Period of time Proposal valid
- \_\_\_\_\_ c. Agreement to satisfy RFP Section IV responsibilities
- \_\_\_\_\_ d. Acceptance of draft contract terms of RFP Section VI

\_\_\_\_\_ **FORMATTING REQUIREMENTS:** Technical Proposal and Cost Proposal each comply with formatting requirements stated in RFP Section II. F. 4. a through f.

- \_\_\_\_\_ a. Number of Copies (one original Technical Proposal to include 3.5" diskette, one original Cost Proposal to include 3.5" diskette) and nine (9) copies of each
- \_\_\_\_\_ b. Technical and Cost Proposals separately bound
- \_\_\_\_\_ c. Table of Contents
- \_\_\_\_\_ d. Index Tabs
- \_\_\_\_\_ e. Pagination
- \_\_\_\_\_ f. Proposal updates/corrections

\_\_\_\_\_ **REQUIRED CONTENT OF PROPOSALS:** The Technical Proposal and Cost Proposal each substantially comply with the content requirements set forth in RFP Sections III, Part B and IV.

**TECHNICAL PROPOSAL:** The Technical Proposal meets each of the requirements stated in RFP Section III. Part A. 1 through 15.

- \_\_\_\_\_ 1. Executive Summary of Proposal
- \_\_\_\_\_ 2. Name and Address of Main and Branch Offices; name of individual negotiating contract
- \_\_\_\_\_ 3. Acceptance of terms of Omnibus Procurement Act of 1992
- \_\_\_\_\_ 4. Executed combined MacBride Act Statement and Non-Collusive Bidding Certification (Exhibit I. G)
- \_\_\_\_\_ 5. Conflict of Interest statement
- \_\_\_\_\_ 6. Statement of experience
- \_\_\_\_\_ 7. Statement identifying subcontractors
- \_\_\_\_\_ 8. References
- \_\_\_\_\_ 9. Audited and other financial statements
- \_\_\_\_\_ 10. Description of litigation
- \_\_\_\_\_ 11. Vendor Responsibility Questionnaire (Exhibit I.H)
- \_\_\_\_\_ 12. Work Force Employment Utilization and/or Consultant Firms Report (Exhibit I.I)
- \_\_\_\_\_ 13. Narrative response to all questions in RFP Section III, Part B
- \_\_\_\_\_ 14. Biographical Sketch Forms (Exhibit I.J)
- \_\_\_\_\_ 15. Procurement Disclosure Forms (Exhibits I.C and I.D)

\_\_\_\_\_ **COST PROPOSAL:** The Cost Proposal meets each of the requirements stated in RFP Section IV.

\_\_\_\_\_ **Please indicate here if you intend to submit Exhibit I.E, Redaction Chart, in accordance with RFP Section II. G.**



State of New York  
 Department of Civil Service  
 The State Campus  
 Albany, NY 12239

**ADMINISTRATIVE SERVICES DIVISION**

**Procurement Disclosure – Offeror/Contractor Disclosure of Contacts**

ADM-524.1 (1/04L)

**INSTRUCTIONS:**

**OFFERORS** are required to demonstrate compliance with New York State Executive Order No. 127, "Providing for Additional State Procurement Disclosure" by completing this form at the time the Offeror's Proposal is submitted to the Department, and to provide such additional information throughout the procurement until the date of the final contract award, as necessary to ensure compliance with the Executive Order. Failure to complete and submit this form may result in a determination of non-responsiveness and disqualification of the Offeror's proposal. This information will be maintained in the Procurement Record and will be available for inspection as a public record.

**CONTRACTORS** are required to use this form to update this information throughout the term of any contract awarded to the Contractor by the Department. This information will be maintained in the record for the contract(s) for which the Contractor provides services and will be available for inspection as a public record.

Date of Submission: \_\_\_\_\_

Name of Offeror/Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

Please specify whether this is an initial filing in accordance with Section II, paragraph 1 of Executive Order No. 127 or an updated filing in accordance with Section II, paragraph 2 of Executive Order No. 127. (Please check):

Initial filing                       Updated filing

The following person or organization was retained, employed, or designated by or on behalf of the Offeror/Contractor to attempt to influence the procurement process:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Place of Principal Employment: \_\_\_\_\_

Occupation: \_\_\_\_\_

Does the above named person or organization have a financial interest in the procurement? (Please check):

no     yes

**PLEASE USE ADDITIONAL SHEETS AS NECESSARY AND ATTACH THEM TO THIS PAGE**

**PERSONAL PRIVACY PROTECTION NOTIFICATION** - The information you provide on this form is requested for the principal purpose ensuring compliance with Executive Order No. 127. Failure to provide the information may interfere with the Department's ability to administer the procurement to which the request for information relates. The information will be maintained by the Procurement Manager for the subject procurement, Department of Civil Service, The State Campus, Albany, NY 12239. The information will be used in accordance with Public Officers Law section 86(1), also known as the Personal Privacy Protection Law. For information about the Personal Privacy Protection Law, call (518) 457-6375. For information about this form, call the Procurement Manager.



State of New York  
Department of Civil Service  
The State Campus  
Albany, NY 12239

**ADMINISTRATIVE SERVICES DIVISION**  
Procurement Disclosure -  
Offeror Disclosure of Prior Non-Responsibility Determinations

ADM-524 (1/04L)

**Instructions:**

The Offeror must demonstrate its compliance with New York State Executive Order No. 127 by disclosing to the Department whether any State department, office or division, or any board, commission or bureau thereof, or any public benefit corporation, public authority or commission at least one of whose members has been appointed by the Governor, including the State University of New York and the City University of New York, has made a finding of the Offeror's non-responsibility under Executive Order No. 127 in the five years preceding the date of the Offeror's submission of its proposal to the Department. Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the Offeror's proposal.

Date of Submission: \_\_\_\_\_

Name of Offeror: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

Has any covered agency or authority made a finding of non-responsibility, for any reason, regarding the Offeror in the last five years? (Please check):

 no yes

If yes, was the basis for the finding of the Offeror's non-responsibility due to the intentional provision of false or incomplete information required by Executive Order No. 127? (Please check):

 no yes

If yes, please provide details regarding the finding of non-responsibility below:

Covered Agency or Authority: \_\_\_\_\_

Year(s) of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

Has any covered agency or authority terminated a procurement contract with the Offeror due to the intentional provision of false or incomplete information required by Executive Order No. 127? (Please check):

 no yes

**PERSONAL PRIVACY PROTECTION NOTIFICATION** - The information you provide on this form is requested for the principal purpose ensuring compliance with Executive Order No. 127. Failure to provide the information may interfere with the Department's ability to administer the procurement to which the request for information relates. The information will be maintained by the Procurement Manager for the subject procurement, Department of Civil Service, The State Campus, Albany, NY 12239. The information will be used in accordance with Public Officers Law section 86(1), also known as the Personal Privacy Protection Law. For information about the Personal Privacy Protection Law, call (518) 457-9375. For information about this form, call the Procurement Manager of the subject procurement.



Please provide specific justification for each item for which you seek protection from FOIL disclosure. An appropriate justification may include any one or more of the following considerations by which to demonstrate reasonably whether the item for which you seek protection may be excepted from disclosure:

- a) the confidential nature of the specific item, including a description of the nature and extent of the injury to the Offeror's competitive position, such as unfair economic or competitive damage, which would be incurred were the information/record to be disclosed;
- b) whether the specific information/record is treated as confidential by the Offeror, including whether it ever has been made available to any person or entity;
- c) whether any patent, copyright, or similar legal protection exists for the specific item of information;
- d) whether the public disclosure of the information/record is otherwise restricted by law, and the specific source and content of such restriction;
- e) the date upon which the information/record no longer will need to be kept confidential, if applicable;
- f) whether the item of information is known by anyone outside the Offeror's business or organization;
- g) the extent to which the information is known by Offeror's employees and others involved in the Offeror's business;
- h) the value of the specific information/record to the Offeror and to its competitors;
- i) the amount of effort or money expended by the Offeror in developing the information/record; and
- j) the ease or difficulty with which the information could be properly acquired or duplicated (not merely copied) for use by others;

**TAX LAW SECTION 5-a  
CERTIFICATION REGARDING SALES AND COMPENSATING USE TAX**

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The Offeror/Contractor certifies, under penalty of perjury, that:

- a. if the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, the Contractor holds a valid certificate of authority. If the Contractor does not make sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, then the Contractor shall so certify;
- b. if any affiliate of the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, to the best of the Contractor's knowledge, each such affiliate holds a valid certificate of authority. If the Contractor does not have any affiliates making sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, then the Contractor shall so certify; and
- c. if any subcontractor or any affiliate of the subcontractor makes sales delivered by any means to locations within the State of tangible personal property or taxable service having a value in excess of three hundred thousand dollars, to the best of the Contractor's knowledge, each such subcontractor and affiliate holds a valid certificate of authority. If there is no subcontractor or affiliate of the subcontractor making sales delivered by any means to locations within the state of tangible personal property or taxable service having a value in excess or three hundred thousand dollars, then the Contractor shall so certify.

This certification, along with true copies, if applicable, of the certificate of authority held by the Contractor and, if applicable, by, each affiliate of the Contractor, each subcontractor and each affiliate of the subcontractor, shall be incorporated in, and made a part of, the contract.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Name of Offeror/Contractor)

By: \_\_\_\_\_





**Part IV. Subcontractor registration status**

- As of the date of this certification, the contractor does not have any subcontractors.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has 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 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that it is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each subcontractor exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has not 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 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

**Part V. Subcontractor affiliate registration status**

- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it does not have any affiliates.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has any affiliates having 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 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has one or more affiliates having made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that each such affiliate is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has no affiliate having 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 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
COUNTY OF } SS.:

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 resides at \_\_\_, Town of \_\_\_, County of \_\_\_, State of \_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): he is the \_\_\_ of \_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he 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 is the \_\_\_ of \_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he 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 is a duly authorized member of, \_\_\_, LLC, the limited liability company described in said instrument; that he 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 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

Registration No.



## Instructions

### General Information

On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts valued at more than \$15,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. A contractor must use Form ST-220, *Contractor Certification*, to make this certification before the contract may be approved by the Office of the State Comptroller (OSC), or other contract approver if OSC is not required to approve the contract.

This statute applies to contracts resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

The statute does not apply to purchases from preferred sources. For additional information, please see Publication 222, *Questions and Answers Concerning Tax Law Section 5-a*.

### Definition of terms associated with section 5-a

The following is a partial list. Please see Publication 222 for additional information.

A *contractor* is defined as a person awarded a contract by a covered agency.

The term *person* is defined as any entity in business for either profit or not-for-profit purposes and can refer to an individual, partnership, limited liability company, society, association, joint stock company, or corporation.

A *covered agency* is defined as New York State or any department, board, bureau, commission, division, office, council or agency of New York State; public authorities and public benefit corporations. The State Legislature, the judiciary, Department of Law, Office of State Comptroller, State Education Department, State University of New York and the senior colleges of City University of New York are included in this definition.

An *affiliate* is an entity which, through stock ownership or any other affiliation, directly, indirectly or constructively, controls another entity, is controlled by another entity, or is, along with another entity, under the control of a common parent company.

A *subcontractor* is an entity specifically engaged by a contractor or another subcontractor to provide commodities or perform services necessary to allow a contractor to fulfill a particular contract with a covered agency.

*Commodities* means, other than with respect to contracts for State printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange.

*Tangible personal property* means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes, without limitation: (1) raw materials, such as wood, metal, rubber and minerals; (2) manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, computers, clothing, motor vehicles, boats, yachts, appliances, lighting fixtures, building materials; (3) pre-written off-the-shelf software; (4) artistic items such as sketches, paintings, photographs, moving picture films and recordings; (5) animals, trees, shrubs, plants and seeds; (6) bottled water, soda and beer; (7) candy and confections; (8) cigarettes and tobacco products; (9) cosmetics and toiletries; (10) coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange; (11) postage stamps, when purchased for purposes other than mailing; and (12) precious metals in the form of bullion, ingots, wafers and other forms.

### Completing Form ST-220

#### Identification Information

**Contractor name:** Enter the exact legal name of the person or entity who is contracting to provide commodities or services to a covered agency of New York State. This is the name registered with the New York Department of State.

**Contractor's principal place of business:** Enter a street address, not a PO box number.

**Mailing address:** Enter the address where contractor receives mail, if different than the principal place of business.

**Contracting state agency:** Enter the state agency awarding the contract to the contractor.

**Certification statement:** If the contractor is a corporation, the statement must be completed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the corporation. If the contractor is a partnership, the statement must be completed by a partner or person authorized by the partnership. If the contractor is a limited liability company, the statement must be completed by a member of the LLC and be authorized by the LLC.

### Part I – Contract services not pursuant to Tax Law section 5-a

If the services to be performed under the contract are not services within the meaning of Tax Law section 5-a, mark an **X**. You do not have to complete Parts II through V. You must sign and have the certification acknowledged.

For procurement law purposes, *services* means, other than with respect to contracts for State printing, the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For procurement law purposes, technology is a service. The term *services* for procurement law purposes does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article eleven-B of the State Finance Law.

The term *taxable services* for New York State and local sales and compensating use tax law purposes includes, but is not limited to: 1) providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other

manner; 2) processing, assembling, fabricating, printing or reprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale; 3) installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets); 4) storing tangible personal property that is not being held for sale; 5) renting safe deposit boxes, vaults, and similar storage facilities; 6) maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs); 7) providing parking, garaging, or storing services for motor vehicles; 8) interior decorating and designing; 9) protective or detective services; and 10) entertainment or information services provided by means of telephony or telegraphy.

#### Parts II through V

If the contract is covered under Tax Law section 5-a, you must mark an **X** in at least one box in each of these parts. You must also sign and have the certification acknowledged, and complete Schedule A.

#### Schedule A

##### Column A – Relationship to the contractor

The contractor should enter a **C**. It is not necessary for the contractor to complete columns C through E since this information has been provided on page 1.

If the person listed in column B is an affiliate of the contractor, enter in **A**; if a subcontractor, enter an **S**; if an affiliate of a subcontractor, enter **SA**.

##### Column B – Name

Enter the exact legal name as registered with the New York Department of State of each corporation or limited liability company. If the person is a partnership or sole proprietor, enter each partner's or the owner's given name. If the person uses a different name or DBA (doing business as), enter that name as well.

##### Column C – Address

Enter the street address of the person's principal place of business. Do not enter a PO box.

##### Column D – ID number

If the person listed in column B is an individual, enter the social security number of that person. Otherwise enter the employer identification number (EIN) assigned to the person.

##### Column E – Sales tax ID number

Enter the sales tax identification number, if different from the federal identification.

##### Column F – Proof of registration

Enter **CA** and attach a copy of the certificate of authority for the person.

If the certificate of authority is not readily available and if the person is registered with the Department of Taxation and Finance and has confirmed this status with the DTF, enter **RC**.

Return a signed and acknowledged original Form ST-220, and a copy, with the contract to the procuring state agency.

**BIDDER IS REQUIRED TO SIGN BOTH SECTIONS ON THIS PAGE**

**NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND  
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either (answer "yes" or "no" to one or both of the following, as applicable):

(1) Have business operations in Northern Ireland.

Yes \_\_\_\_\_ or No \_\_\_\_\_

If yes:

(2) Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment 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.

Yes \_\_\_\_\_ or No \_\_\_\_\_

\_\_\_\_\_  
(Contractor's Signature)

\_\_\_\_\_  
(Name of Business)

**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

\_\_\_\_\_  
(Contractor's Signature)

\_\_\_\_\_  
(Name of Business)

**STATE OF NEW YORK  
VENDOR RESPONSIBILITY QUESTIONNAIRE**

FEIN #

<b>1. VENDOR IS:</b> <input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUB-CONTRACTOR			
<b>2. VENDOR'S LEGAL BUSINESS NAME</b>		<b>3. IDENTIFICATION NUMBERS</b> a) FEIN #  b) DUNS #	
<b>4. D/B/A – Doing Business As (if applicable) &amp; COUNTY FILED:</b>		<b>5. WEBSITE ADDRESS (if applicable)</b>	
<b>6. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE</b>		<b>7. TELEPHONE NUMBER</b>	<b>8. FAX NUMBER</b>
<b>9. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE IN NEW YORK STATE, if different from above</b>		<b>10. TELEPHONE NUMBER</b>	<b>11. FAX NUMBER</b>
<b>12. PRIMARY PLACE OF BUSINESS IN NEW YORK STATE IS:</b> <input type="checkbox"/> Owned <input type="checkbox"/> Rented  If rented, please provide landlord's name, address, and telephone number below:		<b>13. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE</b>  Name Title Telephone Number Fax Number e-mail	
<b>14. VENDOR'S BUSINESS ENTITY IS (please check appropriate box and provide additional information):</b>			
a) <input type="checkbox"/> Business Corporation	Date of Incorporation	State of Incorporation*	
b) <input type="checkbox"/> Sole Proprietor	Date Established		
c) <input type="checkbox"/> General Partnership	Date Established		
d) <input type="checkbox"/> Not-for-Profit Corporation	Date of Incorporation	State of Incorporation* Charities Registration Number	
e) <input type="checkbox"/> Limited Liability Company (LLC)	Date Established		
f) <input type="checkbox"/> Limited Liability Partnership	Date Established		
g) <input type="checkbox"/> Other – Specify:	Date Established	Jurisdiction Filed (if applicable)	
* If not incorporated in New York State, please provide a copy of authorization to do business in New York.			
<b>15. PRIMARY BUSINESS ACTIVITY - (Please identify the primary business categories, products or services provided by your business)</b>			
<b>16. NAME OF WORKERS' COMPENSATION INSURANCE CARRIER:</b>			
<b>17. LIST ALL OF THE VENDOR'S PRINCIPAL OWNERS AND THE THREE OFFICERS WHO DIRECT THE DAILY OPERATIONS OF THE VENDOR (Attach additional pages if necessary):</b>			
a) NAME (print)	TITLE	b) NAME (print)	TITLE
c) NAME (print)	TITLE	d) NAME (print)	TITLE

**STATE OF NEW YORK  
VENDOR RESPONSIBILITY QUESTIONNAIRE**

**EXHIBIT I.H**

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FEIN #

**A DETAILED EXPLANATION IS REQUIRED FOR EACH QUESTION ANSWERED WITH A "YES," AND MUST BE PROVIDED AS AN ATTACHMENT TO THE COMPLETED QUESTIONNAIRE. YOU MUST PROVIDE ADEQUATE DETAILS OR DOCUMENTS TO AID THE CONTRACTING AGENCY IN MAKING A DETERMINATION OF VENDOR RESPONSIBILITY. PLEASE NUMBER EACH RESPONSE TO MATCH THE QUESTION NUMBER.**

18. Is the vendor certified in New York State as a (check please):  Yes  No  
 Minority Business Enterprise (MBE)  
 Women's Business Enterprise (WBE)  
 Disadvantaged Business Enterprise (DBE)?  
*Please provide a copy of any of the above certifications that apply.*

19. Does the vendor use, or has it used in the past ten (10) years, any other Business Name, FEIN, or D/B/A other than those listed in items 2-4 above?  Yes  No  
*List all other business name(s), Federal Employer Identification Number(s) or any D/B/A names and the dates that these names or numbers were/are in use. Explain the relationship to the vendor.*

20. Are there any individuals now serving in a managerial or consulting capacity to the vendor, including principal owners and officers, who now serve or in the past three (3) years have served as:

a) An elected or appointed public official or officer?  Yes  No  
*List each individual's name, business title, the name of the organization and position elected or appointed to, and dates of service.*

b) A full or part-time employee in a New York State agency or as a consultant, in their individual capacity, to any New York State agency?  Yes  No  
*List each individual's name, business title or consulting capacity and the New York State agency name, and employment position with applicable service dates.*

c) If yes to item #20b, did this individual perform services related to the solicitation, negotiation, operation and/or administration of public contracts for the contracting agency?  Yes  No  
*List each individual's name, business title or consulting capacity and the New York State agency name, and consulting/advisory position with applicable service dates. List each contract name and assigned NYS number.*

d) An officer of any political party organization in New York State, whether paid or unpaid?  Yes  No  
*List each individual's name, business title or consulting capacity and the official political party position held with applicable service dates.*



**STATE OF NEW YORK  
VENDOR RESPONSIBILITY QUESTIONNAIRE**

FEIN #

**21. Within the past five (5) years, has the vendor, any individuals serving in managerial or consulting capacity, principal owners, officers, major stockholder(s) (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate<sup>1</sup> or any person involved in the bidding or contracting process:**

- a) 1. been suspended, debarred or terminated by a local, state or federal authority in connection with a contract or contracting process;  Yes  No**
2. been disqualified for cause as a bidder on any permit, license, concession franchise or lease;
3. entered into an agreement to a voluntary exclusion from bidding/contracting;
4. had a bid rejected on a New York State contract for failure to comply with the MacBride Fair Employment Principles;
5. had a low bid rejected on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract;
6. had status as a Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise denied, de-certified, revoked or forfeited;
7. been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal government contract;
8. been denied an award of a local, state or federal government contract, had a contract suspended or had a contract terminated for non-responsibility; or
9. had a local, state or federal government contract suspended or terminated for cause prior to the completion of the term of the contract?

- b) been indicted, convicted, received a judgment against them or a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?  Yes  No**

- c) been issued a citation, notice, violation order, or are pending an administrative hearing or proceeding or determination for violations of:  Yes  No**
1. federal, state or local health laws, rules or regulations, including but not limited to Occupational Safety & Health Administration (OSHA) or New York State labor law;
2. state or federal environmental laws;
3. unemployment insurance or workers' compensation coverage or claim requirements;
4. Employee Retirement Income Security Act (ERISA);
5. federal, state or local human rights laws;
6. civil rights laws;
7. federal or state security laws;

**STATE OF NEW YORK  
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FEIN #

	<p>8. federal Immigration and Naturalization Services (INS) and Alienage laws;</p> <p>9. state or federal anti-trust laws; or</p> <p>10. charity or consumer laws?</p> <p><i>For any of the above, detail the situation(s), the date(s), the name(s), title(s), address(es) of any individuals involved and, if applicable, any contracting agency, specific details related to the situation(s) and any corrective action(s) taken by the vendor.</i></p>	
22.	<p>In the past three (3) years, has the vendor or its affiliates<sup>1</sup> had any claims, judgments, injunctions, liens, fines or penalties secured by any governmental agency? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><i>Indicate if this is applicable to the submitting vendor or affiliate. State whether the situation(s) was a claim, judgment, injunction, lien or other with an explanation. Provide the name(s) and address(es) of the agency, the amount of the original obligation and outstanding balance. If any of these items are open, unsatisfied, indicate the status of each item as "open" or "unsatisfied."</i></p>	
23.	<p>Has the vendor (for profit and not-for profit corporations) or its affiliates<sup>1</sup>, in the past three (3) years, had any governmental audits that revealed material weaknesses in its system of internal controls, compliance with contractual agreements and/or laws and regulations or any material disallowances? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><i>Indicate if this is applicable to the submitting vendor or affiliate. Detail the type of material weakness found or the situation(s) that gave rise to the disallowance, any corrective action taken by the vendor and the name of the auditing agency.</i></p>	
24.	<p>Is the vendor exempt from income taxes under the Internal Revenue Code? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><i>Indicate the reason for the exemption and provide a copy of any supporting information.</i></p>	
25.	<p>During the past three (3) years, has the vendor failed to:</p> <p>a) file returns or pay any applicable federal, state or city taxes? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>  <i>Identify the taxing jurisdiction, type of tax, liability year(s), and tax liability amount the vendor failed to file/pay and the current status of the liability.</i></p> <p>b) file returns or pay New York State unemployment insurance? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>  <i>Indicate the years the vendor failed to file/pay the insurance and the current status of the liability.</i></p>	
26.	<p>Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates<sup>1</sup> within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates regardless of the date of filing? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><i>Indicate if this is applicable to the submitting vendor or affiliate. If it is an affiliate, include the affiliate's name and FEIN. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed.</i></p>	

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VENDOR RESPONSIBILITY QUESTIONNAIRE**

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<b>27.</b> Is the vendor currently insolvent, or does vendor currently have reason to believe that an involuntary bankruptcy proceeding may be brought against it? <i>Provide financial information to support the vendor's current position, for example, Current Ratio, Debt Ratio, Age of Accounts Payable, Cash Flow and any documents that will provide the agency with an understanding of the vendor's situation.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>28.</b> Has the vendor been a contractor or subcontractor on any contract with any New York State agency in the past five (5) years? <i>List the agency name, address, and contract effective dates. Also provide state contract identification number, if known.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>29.</b> In the past five (5) years, has the vendor or any affiliates <sup>1</sup> : a) defaulted or been terminated on, or had its surety called upon to complete, any contract (public or private) awarded; b) received an overall unsatisfactory performance assessment from any government agency on any contract; or c) had any liens or claims over \$25,000 filed against the firm which remain undischarged or were unsatisfied for more than 90 days ? <i>Indicate if this is applicable to the submitting vendor or affiliate. Detail the situation(s) that gave rise to the negative action, any corrective action taken by the vendor and the name of the contracting agency.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

<sup>1</sup> "Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

**STATE OF NEW YORK  
VENDOR RESPONSIBILITY QUESTIONNAIRE**

FEIN #

State of:                    )  
                                  ) ss:  
County of:                 )

**CERTIFICATION:**

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions in making a determination regarding an award of contract or approval of a subcontract; acknowledges that the State or its agencies and political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

The undersigned certifies that he/she:

- has not altered the content of the questions in the questionnaire in any manner;
- has read and understands all of the items contained in the questionnaire and any pages attached by the submitting vendor;
- has supplied full and complete responses to each item therein to the best of his/her knowledge, information and belief;
- is knowledgeable about the submitting vendor's business and operations;
- understands that New York State will rely on the information supplied in this questionnaire when entering into a contract with the vendor; and
- is under duty to notify the procuring State Agency of any material changes to the vendor's responses herein prior to the State Comptroller's approval of the contract.

Name of Business	Signature of Owner/Officer _____
Address	Printed Name of Signatory
City, State, Zip	Title

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**WORK FORCE EMPLOYMENT UTILIZATION REPORT  
SERVICE and/or CONSULTANT FIRMS**

Agency: \_\_\_\_\_ /Code \_\_\_\_\_ Reporting period: \_\_\_\_\_  
 Check One:  Quarterly  Semi-Annual Report

Contractor/Firm Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Report:  Contract Specific WorkForce  Total Work Force Check if NOT-For- Profit:

Federal ID/Payee ID No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Location of Work \_\_\_\_\_  
 County \_\_\_\_\_ Zip \_\_\_\_\_

Check One:  Prime Contractor  Subcontractor Product/Service Provided: \_\_\_\_\_

Contract Amount: \$ \_\_\_\_\_ Contract Start Date: \_\_\_\_\_ Percent of Job Completed \_\_\_\_\_

Federal Occupational Category	Number of Employees										Total Percent Minority Employees	Total Percent Female Employees	
	Total Number of Employees		Black (Not of Hispanic origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native				
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female			
Officials/Admin.													
Professionals													
Technicians													
Sales Worker													
Office & Clerical													
Craft Workers													
Operatives													
Laborers													
Service Workers													
<b>TOTALS</b>													

Company Official's Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company Official's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Telephone Number ( ) \_\_\_\_\_

## BIOGRAPHICAL SKETCH FORM

INSTRUCTION: Prepare this form for each key staff individual.

---

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Relationship to Project : \_\_\_\_\_

---

### EDUCATION

<u>Institution &amp; Location</u>	<u>Degree</u>	<u>Year Conferred</u>	<u>Discipline</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

### PROFESSIONAL EMPLOYMENT (Start with most recent)

<u>Dates Employer From - To</u>	<u>Title</u>
_____	_____
_____	_____
_____	_____

### PROFESSIONAL EXPERIENCE (Significant experience/education relevant to program)

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**DISPUTE RESOLUTION PROGRAM (DRP)**

**Prospective Offeror Registration Form**

<b>Primary Contact Information</b>	<b>Alternate Contact Information</b>
<b>Company Name:</b>	<b>Company Name:</b>
<b>Contact Name:</b>	<b>Contact Name:</b>
<b>Address:</b>	<b>Address:</b>
<b>Phone Number:</b>	<b>Phone Number:</b>
<b>Fax:</b>	<b>Fax:</b>
<b>E-Mail:</b>	<b>E-Mail:</b>
<b>Preferred Communication Method:</b> <input type="checkbox"/> E-Mail <input type="checkbox"/> Mail	<b>Preferred Communication Method:</b> <input type="checkbox"/> E-Mail <input type="checkbox"/> Mail

To register, complete the exhibit above and submit it via the link [Submit a question or comment](#) or by mail to:

Stefanie Cassier  
Procurement Manager  
New York State Department of Civil Service  
Employee Benefits Division  
W. Averell Harriman State Office Building Campus  
Building 1A, Room 121  
Albany, New York 12239

**DISPUTE RESOLUTION PROGRAM**  
**Equal Employment Opportunity (EEO) Obligations**  
**Offeror Certification of Compliance**

The Offeror must demonstrate its compliance with the Equal Employment Opportunity Act (EEO) by affirming to the Department that the Offeror's EEO Policy Statement contains, at a minimum, language consistent with the provisions of numbered paragraphs 1, 2, 3, and 4. Failure to comply with this provision will result in rejection of the Offeror's proposal.

1. The Offeror shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, gender, age, disability, or marital status; shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination; and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on the Agreement.
2. The Offeror shall state in all solicitations or advertisements for employees that, in the performance of the Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, gender, age, disability, or marital status.
3. The Offeror shall not do business with any employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other Agreement or understanding, that discriminates on the basis of race, creed, color, national origin, gender, age, disability, or marital status.
4. At the request of the DCS, the Offeror agrees to require any employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other Agreement or understanding to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of the Offeror's obligation under the agreement.

The undersigned states that the affirmative statements contained in this certification are true, accurate and complete.

---

Name of Offeror

Date of Submission

---

Name & Title of Officer Submitting this form (Please Print)

---

Authorized Signature



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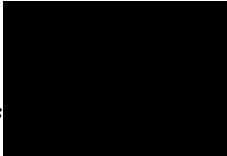
EXHIBIT IIA

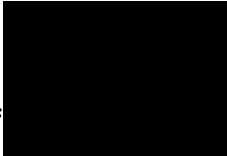
Section 21.8

April 1, 1993

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File this material in the section of the manual referenced above.

TO: State Departments and Agencies 

FROM: Josephine L. Gambino, Commissioner 

SUBJECT: State/Council 82 Workers' Compensation Leave Program -  
1991-1995 Negotiated Agreements for Security Services and  
Security Supervisors Units

As stated in our October 22, 1992, Policy Bulletin 92-03 on Attendance and Leave items in the 1991-95 agreements with Council 82, the workers' compensation benefits have changed; these are the guidelines for the Workers' Compensation Leave Benefit Program contained in the Security Services Unit and the Security Supervisors Unit contracts. The implementation date for this new benefit is April 15, 1993. Accidents occurring on or after that date are subject to these guidelines. Accidents occurring prior to April 15, 1993, are subject to the provisions of the 1988-91 contracts.

This material has been prepared to assist you in implementing the revised workers' compensation provisions. If you have any questions, contact the Employee Relations Section of the Department of Civil Service at (518) 457-5167.

Attachments

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
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INTRODUCTION

The significant change in the workers' compensation benefits for injuries occurring on or after April 15, 1993, for Security Services and Security Supervisors Units' employees, is the ability of an employee to choose Workers' Compensation Law benefits or the Leave Benefit Program provided in the contract. If the contractual benefits are chosen, the individual agrees to be part of a medical evaluation process designed to return individuals to work on limited or light duty prior to full recovery.

The medical evaluation process set up in connection with this benefit is available to management for all Council 82-represented employees who apply for workers' compensation benefits, regardless of the date of the accident, to verify ongoing disability. The medical examinations conducted under this evaluation process do not replace current requirements, but are in addition to any medical reports required by agencies in connection with granting leave benefits or by the State Insurance Fund (SIF) in connection with their responsibilities to provide benefits pursuant to the Workers' Compensation Law.

Initially, SIF will function as the third party administrator for the group of physicians that will be conducting the examinations under this medical evaluation process. A request for proposal is being developed and if another vendor is selected in the future, a memorandum will be issued announcing the effective date and any procedural changes that become necessary.

Only employees whose accidents occur on or after April 15, 1993, are subject to the limited duty portion of the new Leave Benefit Program on a mandatory basis. Other Council 82-represented employees who are recovering from any temporary disability, whether caused by an occupational or ordinary accident or illness, can be offered limited duty under this process, but cannot be required to accept it.

An employee who elects Workers' Compensation Law coverage only, should be placed on leave without pay for all absences related to the workers' compensation accident. This is a regular leave without pay with no additional benefits accruing to the individual. The employee continues to be subject to Section 71 of the Civil Service Law and is entitled to a minimum of one cumulative year of absence and due process proceedings pursuant to Rule 5.9.

An employee who elects to receive benefits under the Workers' Compensation Leave Benefit Program provided in Article 14.9 must

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participate in the medical evaluation and limited duty components of the Program to receive leave benefits. The leave benefit component of the Program has not been changed from the 1988-1991 agreements and continues to be administered in accordance with the explanation provided in the Attendance and Leave Manual, Section 21.8, pp. C10-C19.

FOR EACH SEPARATE ACCIDENT EMPLOYEES MUST ELECT WHICH BENEFIT THEY WANT AT THE TIME THEY REPORT THE ACCIDENT, OR AS SOON THEREAFTER AS POSSIBLE, ON FORMS PROVIDED BY THE STATE. A sample form is attached for agencies to duplicate and use for this purpose. Employees are allowed to make one selection per injury; once a benefit choice has been made, the employee is subject to that benefit for all absences related to that injury.

**BENEFIT DESCRIPTION: Workers' Compensation Leave Benefit Program**

The Workers' Compensation Leave Benefit Program for the Security Services and Security Supervisors Units has three components: the leave benefits as applicable to workers' compensation related absences, the medical evaluation process, and the assignment of limited duty to qualified employees.

**I. Leave Benefits**

As identified in the introduction above, the workers' compensation leave benefits have not been changed except to require that employees participate in the medical evaluation and limited duty components to be eligible for these leave benefits. Employees who elect participation in the Leave Benefit Program and whose absences are accepted by management as workers' compensation are entitled to a cumulative total of six months of leave with pay without charge to credits, followed by use of all available leave credits, by use of sick leave at half-pay (if eligible) and finally, by leave without pay, subject to the provisions of Section 71 of the Civil Service Law and Rule 5.9.

If management denies leave benefits pursuant to the reasons authorized by the negotiated agreements, the employee will either (1) be covered by ordinary disability benefits if the issue is that the disability is not job related, or (2) the employee will be placed on leave without pay if management believes the individual could report for work, subject to resolution of the claim. This represents no change from the administration of workers' compensation leave for accidents occurring prior to April 15, 1993, pursuant to the terms of the 1988-91 agreements.

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II. Medical Evaluation Process

Every accident on or after April 15, 1993, for which the employee elects the Leave Benefit Program and has lost time beyond two full workdays after the date of the accident will be reviewed by management for the purpose of determining the need to schedule a medical evaluation. Agencies should request a medical evaluation under any of the following circumstances:

- the initial prognosis indicates that the absence will last beyond six weeks. In this case the medical evaluation should be scheduled at about five weeks of absence.
- the individual's prognosis indicates that the absence will be less than six weeks, but the employee does not return to work on the specified date. The medical evaluation should be scheduled as soon as possible after the employee fails to return.
- whenever management has reason to believe the individual may be eligible for a limited duty assignment because of the nature of the injury and/or the medical information received.

The employing agency will contact the local SIF representative and request a "Security Medical Evaluation" whenever it is determined that such an evaluation is needed. The State Insurance Fund has agreed to schedule these examinations within five work days of receiving the request.

The employing agency is expected to provide the SIF with the following documentation in connection with such a request:

- current medical reports and C-2, if not already provided.
- current mailing address and telephone number of employee.
- agency contact person and telephone and telefax numbers.

This information should be "faxed" to SIF to avoid delays in scheduling medical examinations.

The SIF will notify the employee and the employer of the date, time and location of the examination. If an employee is unable to attend a scheduled medical examination, he/she is responsible for notifying the employer, in addition to the

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SIF, and should be so advised at the time the examination is scheduled. SIF will also notify the agency if an employee does not report for a scheduled examination. The agency will advise SIF whether or not the examination should be rescheduled. Employees who do not attend these scheduled medical examinations will be subject to appropriate administrative action.

Reasonable and necessary travel expenses incurred by employees attending these examinations will be paid by SIF in accordance with their normal procedures for travel expense reimbursement. Questions on travel expenses should be directed to the agency's usual SIF contact person.

The medical examination will be detailed enough to allow the evaluating physician to determine the employee's level of disability and prognosis for full recovery. In addition, if the level of disability is found to be at 50 percent or less, the evaluating physician will provide a statement of capabilities/limitations so that the agency has sufficient information to establish a limited duty assignment for the employee. A copy of the Estimated Physical Capabilities Form to be used for this purpose is attached. The limited duty should be assigned for the duration of the disability or 45 days, whichever is less.

The SIF will make the results of the medical evaluation, including the limitations statement, available to the employer, within two workdays of the examination. The evaluating physician's report, including the statement of limitations/capabilities, if prepared, will be provided to the employee's treating physician also.

If the employee is more than 50 percent disabled, he/she will continue to receive the leave benefits that are appropriate for his/her length of absence.

If the employee is 50 percent or less disabled, the agency must notify the employee whether he/she is being assigned to limited duty or being allowed to continue the absence receiving the benefits appropriate to the length of absence. Details concerning these assignments are in III, below.

Based on the prognosis given by the evaluating physician and such physician's recommendation, periodic reevaluations should be scheduled until such time as the employee is eligible for a limited duty assignment or fully recovers and is returned to work. Each time such an examination is scheduled, the time

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frames described above for scheduling and receipt of reports will be applied. The employing agencies are directed to discuss reevaluations with the local SIF representative upon completion of the initial evaluation and at any time they believe such an evaluation is needed.

III. Limited Duty Assignments

A. Administration

When an employee's level of disability is classified at 50 percent or less, the individual is qualified for a limited duty assignment.

This level of disability determination is made by the State Insurance Fund based on medical information available to that agency. The medical documentation on which the determination is based may have been provided by the attending physician, by an evaluating physician or by a consulting physician.

Medical documentation will be required by management each time an employee is assigned to limited duty. Although the length of time the employee will be partially disabled is not an eligibility criterion for limited duty, management needs the expected full recovery date in order to design the limited duty assignment. Agencies may not approve limited duty assignments in blocks of time greater than 45 days, but based on the employee's prognosis, can assign shorter periods. While there are no restrictions on the number of times an employee can be assigned limited duty in blocks of 45 calendar days or less, agencies should extend additional periods of limited duty to employees in a uniform manner.

Each time a period of limited duty expires, the employee's medical status should be reviewed by management. This review will usually be based on the ongoing medical information provided by the employee during the limited duty assignment, but may involve another medical evaluation through the SIF if management is not satisfied with the available documentation. Based on this review, the employee will be returned to full duty, assigned an additional block of limited duty or returned to the appropriate leave status.

An employee assigned limited duty is returned to the payroll and is entitled to receive regular salary for the

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period of the limited duty assignment. Eligibility for added salary factors is the same as that for an employee performing full duties. In addition, time spent on a limited duty assignment counts as time served for the purpose of completing an employee's probationary period. Employees on limited duty assignments are in full-pay status and are eligible to earn biweekly leave accruals, observe holidays, earn holiday pay or time for work on a holiday and otherwise are to be treated, for attendance and leave purposes, as any other employee at work performing regular duties.

Employees who decline limited duty assignments will be placed on leave without pay and referred to the SIF for appropriate benefit determinations.

Employees who are not offered limited duty assignments continue on the workers' compensation leave benefits appropriate to their length of absence.

During a period of limited duty an employee will be expected to provide ongoing medical documentation at intervals specified by the appointing authority supporting his/her need for continuation of the limited duty assignment and will also be required to provide medical documentation attesting to full recovery before return to full duties.

**B. Assignments**

A limited duty assignment must reflect the employee's physical condition and be within the following parameters:

1. Limited duty assignments must be developed within the employee's title and current work location. Work location as used in this context is the existing definition of work location within each affected agency, not necessarily the exact location of the employee's bid job, but rather the geographic area within which employees bid on particular assignments. Work location policies for each agency/facility, as they relate to limited duty assignments, should be discussed at appropriate level labor/management meetings.
2. Employees on limited duty assignments may not be counted as part of minimum staffing levels. That

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is, an employee working limited duty cannot be counted as staff in management decisions concerning whether or not there are a sufficient number of employees available.

3. No employee will be bumped from a bid job or be required to work in any job other than his/her bid job to provide limited duty assignments. In other words, no employee at work performing his/her regular assignment can be displaced solely to create a spot for a person returning to work on limited duty.
4. No bid jobs will be abolished to create limited duty assignments. In other words, if an ongoing full-time regular assignment is vacated, for any reason, management cannot eliminate this position solely for the purpose of making the duties available to employees on limited duty. Of course, this has no impact on management's right to direct and deploy the work force as programmatic and/or operational needs change.
5. Seniority selection for resource assignments, where they exist by labor/management agreement, shall not be changed to accommodate limited duty assignments. Currently, agreements to establish such assignments exist only in the Department of Correctional Services.
6. Every effort will be made to maintain the employee's squad and shift when assigned to limited duty. If the employee's physical limitations are such that management is not able to develop an assignment on the same squad or shift, however, the employee should be given as much advance notice of the change as possible. In addition, if assignment to more than one squad or shift is possible, the employee's preference should be considered.

Items 3 and 4 above are subject to resolution under Article 7 of the collective bargaining agreements up to and including Step 3 of the grievance procedure.

Through a review of past workers' compensation experience, agencies may be able to develop an inventory of potential limited duty tasks that can be combined into an assignment once the employee's limitations are known.



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Management is certainly not limited, however, to such an inventory. Agencies are expected to make every effort to tailor each assignment to the individual employee's specific limitations. Once tasks that an employee can perform are identified, management needs to determine which tasks will be combined to establish an assignment for that individual. Some employees may perform only one task for their period of limited duty; others may be assigned a variety of tasks based on their physical limitations. It would be an unusual situation if a limited duty assignment corresponded to a regular assignment in the combination of tasks and length of the workday spent on each.

Since each limited duty assignment may be for 45 calendar days, management may design an assignment that changes over time. For example, an assignment may begin with training for a week or two and then progress to an assignment that is less sedentary for a second period of time and finally, to more physical tasks at the end of the period immediately prior to return to full duties. Assignments such as this should be explained to the employee upon return to limited duty. Management may also find it necessary to begin an assignment defined only for a portion of the 45 days, in order to return the employee to work as quickly as possible, with the understanding that the rest of the assignment would be developed and discussed with the employee prior to expiration of the initial time period.

When an employee is assigned limited duty, the following information should be provided:

- Description of the specific duties
- Location, work hours, workweek of the assignment
- The name of the supervisor, the starting and ending dates

In addition, employees should be advised that (1) limited duty assignments may be changed over the length of the assignment to reflect both changes in the employee's physical limitations as the rehabilitation process progresses and changes in the agencies needs and (2) limited duty assignments may be required for additional blocks of 45 days or less at agency discretion.

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Nothing in this policy diminishes management's right to have the employee examined by a physician selected by management as a condition of allowing the employee to return to full duties. Return to full duty at the end of a limited duty assignment is not automatic. An initial prognosis accepted by management of an employee's ability to perform full duties on a specific date does not prevent management from reconsideration should circumstances appropriately indicate.

C. Termination of Limited Duty Assignments

A limited duty assignment may be terminated prior to its expiration if it is determined, based on medical documentation satisfactory to management, that the employee is able to return to full duties earlier than the original prognosis had indicated. When the agency has medical documentation indicating full recovery, the employee should be ordered to return to full duties immediately. If the employee disputes management's finding of full recovery, the employee will be placed on leave without pay and the case will be referred to the State Insurance Fund and the Workers' Compensation Board.

**NYS CIVIL SERVICE LAW  
SECTION 71  
RULE 5.9 OF THE CIVIL SERVICE LAW**

**NYS Civil Service Law**

**§ 71. Reinstatement After Separation for Disability.**

Where an employee has been separated from the service by reason of a disability resulting from occupational injury or disease as defined in the workmen's compensation law, he shall be entitled to a leave of absence for at least one year, unless his disability is of such a nature as to permanently incapacitate him for the performance of the duties of his position. Such employee may, within one year after the termination of such disability, make application to the civil service department or municipal commission having jurisdiction over the position last held by such employee for a medical examination to be conducted by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such person is physically and mentally fit to perform the duties of his former position, he shall be reinstated to his former position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field, or to a vacant position for which he was eligible for transfer. If no appropriate vacancy shall exist to which reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed upon a preferred list for his former position, and he shall be eligible for reinstatement from such preferred list for a period of four years. In the event that such person is reinstated to a position in a grade lower than that of his former position, his name shall be placed on the preferred eligible list for his former position or any similar position. This section shall not be deemed to modify or supersede any other provisions of law applicable to the reemployment of persons retired from the public service on account of disability.

**NYS Civil Service Law Rules and Regulations****§ 5.9 Appendix****Restoration to duty from workers' compensation leave, termination of service upon exhaustion or termination of workers' compensation leave, or reinstatement following termination due to disability arising from occupational injury or disease.**

(a) **Applicability.** These rules shall govern procedures for restoration to duty from workers' compensation leave, termination of service upon exhaustion or termination of workers' compensation leave, reinstatement to service, or entitlement to placement upon a preferred eligible list, for all state employees who are subject to section 71 of the Civil Service Law.

(b) **Notice upon granting workers' compensation leave.** After notice that payment of compensation has begun, and no later than the 21st day of absence due to an occupational injury or disease as defined in the Workers' Compensation Law, the appointing authority shall notify the employee in writing of the effective date of beginning of that leave; the right to leave of absence from the position during continued disability for one year unless extended; the right to apply to the appointing authority to return to duty pursuant to subdivision (d) of this section at any time during the leave; the right to a hearing to contest a finding of unfitness for restoration to duty; the termination of employment as a matter of law at the expiration of the workers' compensation leave; and the right thereafter to apply to the Civil Service Department within one year of the end of disability for reinstatement to the position if vacant, to a similar position, or to a preferred list pursuant to section 71 of the Civil Service Law and subdivision (e) of this section.

(c) **Termination of service upon exhaustion or termination of workers' compensation leave.**

(1) Upon the exhaustion of leave for disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law, or upon termination of such leave upon a finding that the disability is of such a nature as to permanently incapacitate the employee from performance of the duties of the position, the service of the employee shall be terminated as a matter of law.

(2) However, no such termination of service, if not the result of a hearing, shall be effective until 30 days from the service upon the employee, in person or by mail, of a notice of such impending action, which shall notify the employee of the proposed effective date of the termination; the right to apply to the appointing authority pursuant to subdivision (d) of this section for reinstatement to duty if medically fit; the obligation to submit to a medical examination to determine fitness to perform the duties of the position, the right to a hearing to contest a finding of unfitness for restoration to duty; and the right after termination of employment to apply to the Civil Service Department within one year of the end of disability for

reinstatement to the position if vacant, to a similar position, or to a preferred list, pursuant to section 71 of the Civil Service Law and subdivision (e) of this section.

(3) The final notice of termination shall notify the affected employee of the right to apply to the Civil Service Department within one year of the end of disability for reinstatement to employment or a preferred list pursuant to Civil Service Law, section 71 and subdivision (e) of this section.

**(d) Restoration to duty from workers' compensation leave.**

(1) Upon request by the employee, the appointing authority, if satisfied that the employee is medically fit to perform the duties of the position, shall restore the employee to duty. If not satisfied that the employee is medically fit to perform the duties of the position, the appointing authority shall require the employee to undergo a medical examination, by a physician designated by the appointing authority, before the employee may be restored to duty. Prior to the medical examination, the appointing authority shall provide the designated physician and the employee with a statement of the regularly assigned duties of the position from which the employee is on leave.

(2) The employee, if found by the examining physician to be fit to perform the duties of the position from which the employee is on leave, shall be restored to duty.

(3) An employee who is not certified by the examining physician to be fit, may in the discretion of the appointing authority, upon the request of the employee, be restored to duty notwithstanding that finding, based upon all information available.

(4) An employee who is certified by the physician designated by the appointing authority to be unfit for duty at that time or to be permanently incapacitated from performing the duties of the job, and whom the employer proposed to refuse to restore to duty, shall be given written notice by the appointing authority of such refusal, the reason therefor, the right to a hearing if the employee wishes to contest that refusal, the procedures and time limit to apply for a hearing, and a copy of the medical report and any other records on which that decision is based, which shall be delivered personally, or mailed by certified mail to the employee at the employee's address of record. The employee may apply in writing to the appointing authority within 10 working days of the personal service or service by mail of the notice of refusal, for a hearing before a hearing officer who, except as specified herein, shall be appointed and shall conduct the proceedings in accord with article 3 of the State Administrative Procedure Act. The employee may be represented or assisted by an attorney or by a representative of the labor organization, if any, certified or recognized to represent the employee's bargaining unit. The hearing officer shall receive documents and testimony as well as written and oral argument on the issues of the medical condition of the employee, the duties of the position, and the ability of the employee to perform those duties, and shall submit the record of the proceeding, together with recommendations, to the appointing authority.

(5) The appointing authority shall issue a written finding of facts and determination

restoring the employee to duty, continuing the workers' compensation leave, or terminating the workers' compensation leave upon a finding of permanent incapacitation from the duties of the position pursuant to Civil Service Law, section 71. The determination of the appointing authority shall be based upon the record as a whole, assembled by the hearing officer, and shall be final, subject only to judicial review pursuant to article 78 of the Civil Practice Law and Rules.

(6) The appointing authority shall not be required to entertain more than one such application for restoration to duty from any single employee during any six month period. However, nothing herein shall limit the right of the employee to submit, and the duty of the appointing authority to consider, one application made during the final 30 days of the workers' compensation leave. If the appointing authority has not rendered a decision prior to the expiration of the workers' compensation leave, and except to the extent that delay has been occasioned by any action or inaction on the part of the employee, that leave shall be extended to include the date of decision by the appointing authority.

**(e) Reinstatement after termination of leave.**

(1) At any time after termination of workers' compensation leave and within one year after termination of the disability resulting from the state employment related occupational injury or disease as defined in the Workers' Compensation Law, the former employee may apply to the Civil Service Department for a medical examination to be conducted by a physician selected by the department. Upon application for examination, the former employing agency shall be requested to provide a statement of the duties regularly required of incumbents in the title to which restoration to duty is requested. If obtaining that statement would unduly delay proceedings, the official duty statement on file with the department shall be used. The duty statement to be used shall be served upon the applicant together with the notice of the date, time and place of the medical examination. The applicant shall be notified in writing of the findings of the physician, by certified mail addressed to the applicant's address of record.

(2) The applicant, if certified by the examining physician to be fit to perform the duties of the former position, shall be reinstated or placed on a preferred list in accord with section 71 of the Civil Service Law.

(3) Any applicant medically examined pursuant to paragraph (1) of this subdivision and certified not to be fit to perform the duties of the former position, may apply in writing for a hearing, to the President of the Civil Service Commission, acting as the head of the Department of Civil Service. Such application shall be made within 10 working days from the date of service of the notice of an adverse medical finding. The hearing shall be held before a hearing officer who, except as specified herein, shall be appointed and shall conduct the proceedings in accord with article 3 of the State Administrative Procedure Act. The applicant may be represented or assisted by an attorney or by a representative of the labor organization, if any, certified or recognized to represent the bargaining unit to which the position to which the

applicant seeks reinstatement is assigned. The hearing officer shall receive documents and testimony as well as written and oral argument on the issues of the medical condition of the applicant, the duties of the position, and the ability of the applicant to perform those duties, and shall submit the record of the proceeding, with recommendations, to the President of the Civil Service Commission, acting as the head of the Department of Civil Service.

(4) The President of the Civil Service Commission, acting as the head of the Department of Civil Service, shall issue a written finding of facts and determination either directing or denying the reinstatement or placement upon a preferred list of the applicant in accord with section 71 of the Civil Service Law. The determination of the President of the Civil Service Commission shall be based on the record as a whole, assembled by the hearing officer. It shall be subject to review by the Civil Service Commission, upon written application by a party aggrieved within 30 days of service of the determination, pursuant to subdivision 5 of section 6 of the Civil Service Law, on the issue of manifest error only, and solely upon the record of the proceeding before the president. The decision of the commission shall be final, subject only to judicial review pursuant to article 78 of the Civil Practice Law and Rules.

(5) The Department of Civil Service shall not be required to entertain more than one application for reinstatement hereunder from any applicant during any six month period.



ARTICLE 14 — Attendance and Leave

§ 14.9 Workers' Compensation Leave

The Medical Evaluation Program (MEP) for workers' compensation will be continued. Employees opting into the MEP will receive the benefits provided herein. Those employees opting not to participate in the MEP will be eligible to apply for the statutory workers' compensation benefits. A light duty component shall be part of the MEP.

- a. An employee necessarily absent from duty because of occupational injury or disease as defined in the Workers' Compensation Law who is allowed leave from his position for the period of his absence necessitated by such injury or disease shall be:  
(1) first granted compensation leave with pay without charge to leave credits not exceeding cumulatively six months; and (2) upon exhausting leave pay benefits under (1) above be allowed to draw accrued leave credits; and (3) upon exhausting leave with full pay benefits under (1) and (2) above be allowed sick leave at half pay for which he may be eligible during such leave unless: (i) there is good and sufficient reason to believe that the disability resulting from such injury or disease is not job related or is primarily due to some pre-existing medical condition; (ii) there is good and sufficient reason to believe that the employee could report for work on a full-time or part-time basis; (iii) the employee's services would have been terminated or would have ceased under law; or (iv) the employee's claim for benefit is controverted by the State Insurance Fund.
- b. An employee allowed leave with pay under paragraph 14.9(a) may elect to draw accrued leave credits for part or all of his absence from duty before being granted leave with pay under paragraph 14.9(a)(1) above.
- c. If it is subsequently determined that an employee was not entitled to compensation leave with pay without charge to leave credits for any period for which he was granted such leave as provided herein above, he shall be required to make reimbursement for such paid leave from current or subsequent accumulations of leave credits at a rate and in a manner determined by the appointing authority.
- d. An employee who draws leave credits as provided in paragraph 14.9(a) shall be entitled to restoration of such credits, including those used for absences of less than a full day, as are used during a period of absence for which an award of compensation has been made and credited to the State as reimbursement of wages paid. An employee who is necessarily absent from duty as described herein above may be granted compensation leave with pay without charge against leave credits for absences of less than a full day where such employee returns to work on a part-time basis.
- e. The Employer agrees that an employee eligible for Workers' Compensation Leave because of occupational injury or disease as defined in the Workers' Compensation Law, when absent from work for the purpose of attending a hearing scheduled by the Workers' Compensation Board in connection with such injury or disease shall be



granted compensation leave with pay without charge to leave credits for such absence provided, however, that the cumulative total of compensation leave with pay not charged to leave credits granted for attendance at Workers' Compensation Board hearings or for absences necessitated by the occupational injury or disease shall not exceed six months.

- f. On the employee's prior written request at least three days in advance, the Employer will reschedule midnight or afternoon shift employees to attend a workers' compensation hearing to the normal day shift for the day of the hearing.
  - g. An employee necessarily absent from duty and removed from the payroll because of occupational injury or disease as defined in the Workers' Compensation Law shall be treated as though on payroll for the period of disability not to exceed twelve (12) months per injury for the purposes of coverage under the New York State Health Insurance Plan.
  - h. The State and NYSCOPBA agree to continue the standing Joint Committee on Workers' Compensation. The Committee shall consist of an equal number of representatives selected by NYSCOPBA and an equal number of representatives selected by the State. The Committee will be responsible for the ongoing review and oversight of the MEP.
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## NYS MEDICAL EVALUATION PROGRAM (MEP)

### WORKERS' COMPENSATION MEMORANDUM OF UNDERSTANDING

#### Eligibility

All employees who are claiming an occupational injury or disease may participate in a ~~Managed Care Program~~ Medical Evaluation Program (MEP). The Medical Evaluation Program will be administered by the State Insurance Fund (SIF) unless a change in MEP administrator is mutually agreed upon. Only those ~~opting not to participate in the Managed Care Program~~ MEP will be eligible to apply for the statutory Workers' Compensation benefits.

#### Benefit

Only employees in the ~~Managed Care Program~~ MEP will receive a maximum of ~~12~~ 6 months of Workers' Compensation Leave (WCL) at full pay per disability ~~continuation of Article 14.9 language~~.

#### Managed Care Medical Evaluation Program

Effective October 1, 1992, or as soon as practicable thereafter, a ~~Managed Care Program for Workers' Compensation~~ will be implemented. The ~~Managed Care Program~~ MEP will consist of a Statewide Network of evaluating physicians. The evaluating physician will be responsible for determining the level of disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law.

Physicians eligible to participate in the Network shall be identified by the MEP administrator, ~~selected third party vendor based on a set of criteria developed by the vendor in conjunction with the Joint Committee on Workers' Compensation. The criteria shall include, but not be limited to, physician board certification and availability and reporting standards.~~

~~The vendor will select evaluating physicians from those physicians identified as having satisfied the criteria.~~

All employees will be directed to report to the selected evaluating physician for a disability determination. Medical evaluations will only be scheduled for injuries or disease resulting in lost time.

Employees participating in MEP may be directed to report to an identified attending physician upon the request of the employing agency if:

1. The employee has lost time beyond two full work days after the date of an accident;
2. The initial medical prognosis by the employee's attending physician indicates that the employee's absence will last beyond six weeks;
3. The employee's prognosis indicates that the absence will be less than six weeks, but the employee does not return to work on the specified date; or
4. The agency has reason to believe that the employee may be eligible for limited light duty assignment because of the nature of the injury and/or the medical information received.

When appropriate, the evaluating physician will perform periodic examinations to determine the status of the employee's disability.

#### Committee

The State and Council 82 agree to create a continue the standing Joint Committee on Workers' Compensation. The Committee shall consist of an equal number of representatives selected by Council 82 and an equal number of representatives selected by the State.

The Joint Committee's areas of responsibility shall include, but not be limited to, the following:

- Review of the ~~Managed Care Program~~ MEP and its operation;
- Participate in the development of physician selection criteria;
- Participate in the development of Review the standard physical limitation form;
- Participate in the review of performance of evaluating physicians;
- Review the standards used by MEP and DRP physicians in determining level of disability;

Review of issues of risk in the workplace in general and on an individual basis;

Review the availability of benefits to employees who contract occupational diseases;

Consideration of implementation of jointly agreed upon projects which are designed to reduce job-related accidents;

Participate in joint educational conferences with the agencies and facilities including education and communication material for the MEP and DRP;

Development of recommendations to improve safety in the workplace and related areas;

Insure that all employees have ready access to evaluating physicians within their geographic location;

If a mutually agreed upon change in vendor is made, the Joint Committee shall participate in the development of the RFP and the RFP process.

### Light Duty

If the employee's level of disability is classified as 50% or less by the evaluating physician, the employee will be notified by the Employer to either report for light duty or remain on WCL at full pay. Those refusing a light duty assignment when offered will be eligible to apply for the statutory Workers' Compensation benefit. A dispute resolution process will be developed by the Joint Committee. A Memorandum of Understanding describing the dispute resolution process is attached.

If the treating physician determines that the degree of disability of an employee on light duty exceeds 50 percent, the employing agency should schedule an MEP upon receipt of such notice from the treating physician.

All the light duty assignments will be within the employee's title and at the employee's work location. In cases where minimum staffing levels have been established, light duty will not be used to affect existing minimum staffing levels.

Light duty assignments will continue for the duration of the disability, or 45 days, or less. Such light duty assignments may be extended with authorization of the evaluating physician and the approval of the agency.

If no light duty assignment is available or if the light duty assignment expires, the employee will remain on WCL at full pay.

Light duty assignments will be identified and assigned by Management. The parameters of light duty assignments may be discussed pursuant to Article 25.4. Any problems which arise concerning light duty assignments will be addressed by the Joint Committee.

The six month entitlement to WCL excludes the entire period of light duty assignments.

Light duty programs are available to employees returning from sick leave. The employee may request the light duty program and it will be granted at Management's discretion.

\_\_\_\_\_  
Joseph J. Pellegrini, General Counsel  
for the State of New York

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph P. Puma, Executive Director  
For Council 82, AFSCME, AFL-CIO

Dated: \_\_\_\_\_

\_\_\_\_\_  
Beren A. Hrachian, Associate Director  
For the State of New York

Dated: \_\_\_\_\_

\_\_\_\_\_  
John R. Engelhardt,  
Executive Vice President  
For Council 82, AFSCME, AFL-CIO

Dated: \_\_\_\_\_

## **WORKERS' COMPENSATION MEMORANDUM OF UNDERSTANDING**

### **Eligibility**

All employees who are claiming an occupational injury or disease may participate in a Medical Evaluation Program (MEP). The Medical Evaluation Program will be administered by the State Insurance Fund (SIF) unless a change in MEP administrator is mutually agreed upon. Only those opting not to participate in the MEP will be eligible to apply for the statutory Workers' Compensation benefits.

### **Benefit**

Only employees in the MEP will receive a maximum of six months of Workers' Compensation Leave (WCL) at full pay per disability (continuation of Article 14.9 language).

### **Medical Evaluation Program**

The MEP will consist of a Statewide Network of evaluating physicians. The evaluating physician will be responsible for determining the level of disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law.

Physicians eligible to participate in the Network shall be identified by the MEP administrator.

All employees will be directed to report to the selected evaluating physician for a disability determination. Medical evaluations will only be scheduled for injuries or disease resulting in lost time.

Employees participating in MEP may be directed to report to an identified evaluating physician upon the request of the employing agency if:

1. The employee has lost time beyond two full work days after the date of an accident;
2. The initial medical prognosis by the employee's attending physician indicates that the employee's absence will last beyond six weeks;
3. The employee's prognosis indicates that the absence will be less than six weeks, but the employee does not return to work on the specified date; or
4. The agency has reason to believe that the employee may be eligible for limited light duty assignment because of the nature of the injury and/or the medical information received.

When appropriate, the evaluating physician will perform periodic examinations to determine the status of the employee's disability.

### **Joint Committee**

The State and NYSCOPBA agree to continue the standing Joint Committee on Workers' Compensation. The Committee shall consist of an equal number of representatives selected by NYSCOPBA and an equal number of representatives selected by the State.

The Joint Committee's areas of responsibility shall include, but not limited to, the following:

- **Review of the MEP and its operation;**
- **Review the standard physical limitation form;**
- **Participate in the review of performance of evaluating physicians;**
- **Review the standards used by MEP and DRP physicians in determining level of disability;**
- **Review of issues of risk in the workplace in general and on an individual basis;**
- **Review the availability of benefits to employees who contract occupational diseases;**
- **Consideration of implementation of jointly agreed upon projects which are designed to reduce job-related accidents;**
- **Participate in joint educational conferences with the agencies and facilities including education and communication material for the MEP and DRP;**
- **Development of recommendations to improve safety in the workplace and related areas;**
- **Insure that all employees have ready access to evaluating physicians within their geographic location;**
- **If a mutually agreed upon change in vendor is made, the Joint Committee shall participate in the development of the RFP and the RFP process.**

Light Duty

If the employee's level of disability is classified as 50% or less by the evaluating physician, the employee will be notified by the Employer to either report for light duty or remain on WCL at full pay. Those refusing a light duty assignment when offered will be eligible to apply for the statutory Workers' Compensation benefit. A Memorandum of Understanding describing the dispute resolution process is attached.

If the treating physician determines that the degree of disability of an employee on light duty exceeds 50 percent, the employing agency should schedule an MEP upon receipt of such notice from the treating physician.

All the light duty assignments will be within the employee's title and at the employee's work location. In cases where minimum staffing levels have been established, light duty will not be used to affect existing minimum staffing levels.

Light duty assignments will continue for the duration of the disability, or 45 days, whichever is less. Such light duty assignments may be extended with authorization of the evaluating physician and the approval of the agency.

If no light duty assignment is available or if the light duty assignment expires, the employee will remain on WCL at full pay.

Light duty assignments will be identified and assigned by Management. The parameters of light duty assignments may be discussed pursuant to Article 25.4. Any problems which arise concerning light duty assignments will be addressed by the Joint Committee.

The six month entitlement to WCL excludes the entire period of light duty assignments.

Light duty programs are available to employees returning from sick leave. The employee may request the light duty program and it will be granted at Management's discretion.

  
Linda Angello, Director  
For the State of New York

  
Brian Shanagher, President  
For NYSCOPBA

Dated: May 18, 2000

Dated: MAY 18, 2000



## **WORKERS' COMPENSATION DISPUTE RESOLUTION PROGRAM MEMORANDUM OF UNDERSTANDING**

The Dispute Resolution Program (DRP) for the employees of the Security Services Unit and the Security Supervisors Unit will provide a process to review conflicting medical opinions regarding an employee's level of disability for a compensable injury.

### **Eligibility**

Employees shall be eligible for the DRP if a compensable accident pursuant to the Workers' Compensation Law occurred on or after 4/15/93 and such employee elected to participate in the Medical Evaluation Program (MEP) administered by the State Insurance Fund (SIF) and the period of time under dispute occurs after the date of implementation of the program pursuant to a RFP to be issued. The dispute resolution shall be limited to those cases where after the employee has elected to participate in the MEP administered by the SIF and the employing agency has ordered, based on MEP, an employee to return to duty, either light duty or full duty based on the circumstances, because (1) the evaluating physician determines that the employee has an injury/illness resulting in a disability of 50 percent or less and the treating physician determines that the employee has an injury/illness resulting in a disability of greater than 50 percent or (2) where the evaluating physician determines that the employee has no disability and the treating physician determines that a disability does exist.

### **Effective Date**

The DRP will become effective on the date of implementation as will be set forth in the Request for Proposal for this program.

### **Program Description**

The following definitions apply only to the terms discussed in this section of the Memorandum of Understanding (MOU):

- ▶ **Work Day** - A work day is any day that the employee is scheduled to report to work. Work days include Saturday, Sunday and holidays.
- ▶ **Business Day** - A business day is any day Monday through Friday when there is a reasonable expectation that the majority of business is conducted. Business days do not include Saturday, Sunday or legal holidays.
- ▶ **Calendar Day** - A calendar day is any day of the week. Calendar days run sequentially.

- ▶ **Pass Day** - Pass days are the days of the week the employee is scheduled not to work such as weekends.
- ▶ **Treating Physician** - The treating physician is the doctor that the employee chooses to provide direct care for the disability.
- ▶ **Evaluating Physician** - The evaluating physician is the medical consultant employed by the SIF who determines the degree of medical disability, upon which Management decides if an employee should return to work in light or full duty capacity, as appropriate. However, in no case shall the evaluating physician direct the employee to return to work.
- ▶ **DRP Administrator** - The DRP Administrator will be responsible for the review of the conflicting medical evaluations which are appealed by the treating physician.

The requests for dispute resolution must be initiated by the employee's treating physician in writing to the Administrator and may be faxed or sent by overnight mail. A request form will be designed by the DRP Administrator with input from the union and the State Joint Committee on Workers' Compensation which will require the treating physician to provide sufficient medical information to support an appeal. A physician selected by the Administrator of the DRP shall review the medical information from the treating and evaluating physicians and make a determination and notify in writing the employee, employing agency, evaluating physician, treating physician, Council 82 and the SIF regarding the employee's level of disability within seven calendar days of the receipt of the written appeal.

In all cases it is the employee's responsibility to work light duty. The employee who disputes the evaluating physician's medical determination of degree of disability has three basic courses of action (1) refuses to work and files an appeal or (2) works the light duty assignment and files an appeal or (3) refuses to work and accepts the statutory Workers' Compensation benefits.

If an employee does not report to the employing Agency to accept the medically appropriate assignment: (1) the employee will notify the Agency and be considered to be on Leave Without Pay (LWOP) from the Agency's payroll for a period of three (3) work days; (2) absences during the seven (7) work days following excused LWOP may be charged to accrued leave credits, personal leave, sick leave or sick leave at half-pay if the employee is eligible; (3) if the treating physician does not file an appeal within three (3) business days after being ordered to return to work (4 business days if the order to return to work is given after noon), the employee will be returned to LWOP status; provided, however, once the appeal is filed, the employee may charge the

balance of seven (7) work days to accrued leave credits, personal leave, sick leave or sick leave at half-pay in accordance with clause (2) above, after which time the employee will receive Article 14.9 leave.

Situations (1) and (3): The employee who refuses to return to work will be placed immediately on LWOP.

- ▶ The employee, whose physician appeals, will be placed in LWOP for three work days followed by up to seven work days charged to available leave credits.
- ▶ The employee's treating physician has three business days to submit the appeal to the DRP Administrator.
  - The appeal period begins the first business day the employee is notified that he/she must return to work, if such notification occurs prior to 12 Noon.
  - If the employee is notified to return to work after 12 Noon or if the employee is notified on a non-business day, the appeal period will begin on the next business day.
- ▶ If the appeal is not received during the appeal period as described above, the employee will remain or be placed on LWOP until an appeal is received.
- ▶ If the three days of LWOP ends prior to the expiration of the appeal period (three business days), the employee will be allowed to use leave credits until the appeal period expires.
- ▶ Following the three days of LWOP and if the appeal is received by the DRP Administrator during the appeal period, the employee will be allowed to charge available leave credits for up to seven work days pending the outcome of the appeal.
- ▶ Once the appeal is received the Administrator will have seven calendar days, from the time of receipt, to render a decision.
- ▶ If SIF's evaluating physician has determined that the employee is partially disabled, absences during the next seven workdays may be charged to sick leave and sick leave at half-pay, if the employee is eligible.
- ▶ If the employee has no leave credits, he/she will be continued on LWOP for the remainder of the seven workdays or until the decision is rendered, whichever occurs first.

- ▶ **If the Administrator does not render a decision by COB on the seventh calendar day following receipt of the appeal, the employee will be placed on WCL, not charged to credits, pursuant to Article 14.9 of the negotiated Agreement on the next scheduled workday pending the outcome of the appeal.**
- ▶ **Whenever LWOP is referenced it is presumed that eligible employees will receive the statutory benefits pursuant to the Workers' Compensation Law.**
- ▶ **The statutory benefit is creditable to New York State as wages paid whenever the employee is in pay status.**

**Situation (2): The employee works light duty pending the outcome of the appeal and will receive full pay.**

- ▶ **Once the appeal is received, the Administrator will have seven calendar days from the time of receipt to render a decision.**
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**The outcome of the dispute resolution shall be reported, in writing, to the employee, employing agency, the evaluating physician, the treating physician, Council 82 and the SIF, by the DRP Administrator.**

**If the physician selected by the Administrator of the DRP finds in favor of the treating physician's determination of level of disability, the employee will receive the appropriate level of Workers' Compensation Leave, as defined in Article 14.9 of the Security Services Unit and the Security Supervisors Unit/New York State contracts, retroactive to the first day of LWOP.**

- ▶ **The first day of LWOP is the first day the employee did not report for work.**
- ▶ **Receiving Workers' Compensation Leave in accordance with Article 14.9**

means, that depending on how much absence the employee has already had for this injury, an employee may be on Workers' Compensation leave with pay without charge to credits, charging leave credits, using sick leave at half-pay, or on LWOP.

If the DRP's physician finds in favor of the SIF evaluating physician's determination of level of disability, the employing agency shall notify the employee to return to work, the employee shall report to the employing agency on the next assigned workday for the medically appropriate assignment, or if the employee refuses to return to work, he/she will be placed on LWOP.

- ▶ No change will be made in the employee's status retroactively based on the denial of an appeal for any absence which occurred during pendency of the appeal.
- ▶ Any leave credits used during the appeal period will not be returned to the employee.
- ▶ If, at a subsequent hearing of the Workers' Compensation Board, the appeal period is found compensable, restoration of such leave credits will be proportional to the wage award.
- ▶ The employee who chooses to remain absent and is placed on LWOP will receive benefits as directed by the Workers' Compensation Board only, and is entitled to no benefits pursuant to Article 14.9.

Requests for further appeals beyond the DRP pertaining to issues of eligibility for statutory benefits shall be to the Workers' Compensation Board pursuant to the New York State Workers' Compensation Law.

#### Joint Committee on Workers' Compensation

The Joint Committee on Workers' Compensation established pursuant to the Workers' Compensation MOU signed July 1, 1992, and modified by the Workers' Compensation MOU dated November 9, 1995, shall, in addition to the responsibilities outlined in the November 9, 1995 MOU, work with the parties in the development and implementation of the Council 82 Workers' Compensation DRP as follows:

- ▶ Review and comment on the Request for Proposals (RFP);
- ▶ Attend the Bidders' Conference;
- ▶ Review, comment and provide feedback on the proposals submitted by potential vendors in response to the RFP;

- ▶ **Attend and take an active role in the Management Interviews;**
- ▶ **Attend any site visits planned in conjunction with the RFP process;**
- ▶ **Consult on the selection of the finalist vendor;**
- ▶ **Review and comment on the employee communication material developed for the Program including the DRP appeal request form;**
- ▶ **Review reports produced by the Program Administrator which monitor the ongoing administration of the Program;**
- ▶ **Participate in joint educational conferences with the agencies and facilities;**
- ▶ **Establish a schedule for periodic reviews of the Medical Evaluation Program;**
- ▶ **Provide the Program Administrator with copies of Department of Civil Service job descriptions.**

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The requests for dispute resolution must be initiated by the employee's treating physician in writing to the Administrator and may be faxed or sent by overnight mail. A request form will be designed by the DRP Administrator with input from the Joint Committee on Workers' Compensation which will require the treating physician to provide sufficient medical information to support an appeal. A physician selected by the Administrator of the DRP shall review the medical information from the treating and evaluating physicians and make a determination and notify in writing the employee, employing agency, evaluating physician, treating physician, NYSCOPBA and the SIF regarding the employee's level of disability within seven calendar days of the receipt of the written appeal.

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- ▶ If the Administrator does not render a decision by COB on the seventh

**calendar day following receipt of the appeal, the employee will be placed on WCL, not charged to credits, pursuant to Article 14.9 of the negotiated Agreement on the next scheduled workday pending the outcome of the appeal.**

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**If the physician selected by the Administrator of the DRP finds in favor of the treating physician's determination of level of disability, the employee will receive the appropriate level of Workers' Compensation Leave, as defined in Article 14.9 of the Security Services Unit/New York State contracts, retroactive to the first day of LWOP.**

- ▶ **The first day of LWOP is the first day the employee did not report for work.**
- ▶ **Receiving Workers' Compensation Leave in accordance with Article 14.9 means, that depending on how much absence the employee has already had for this injury, an employee may be on Workers' Compensation leave with pay without charge to credits, charging leave credits, using sick leave at**

half-pay, or on LWOP.

If the DRP's physician finds in favor of the SIF evaluating physician's determination of level of disability, the employing agency shall notify the employee to return to work, the employee shall report to the employing agency on the next assigned workday for the medically appropriate assignment, or if the employee refuses to return to work, he/she will be placed on LWOP.

- ▶ No change will be made in the employee's status retroactively based on the denial of an appeal for any absence which occurred during pendency of the appeal.
- ▶ Any leave credits used during the appeal period will not be returned to the employee.
- ▶ If, at a subsequent hearing of the Workers' Compensation Board, the appeal period is found compensable, restoration of such leave credits will be proportional to the wage award.
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#### Joint Committee on Workers' Compensation

The Joint Committee on Workers' Compensation established pursuant to the Workers' Compensation MOU signed July 1, 1991, and modified by the Workers' Compensation MOU dated November 9, 1995, shall, in addition to the responsibilities outlined in the November 9, 1995 MOU, work with the parties in the development and implementation of the NYSCOPBA Workers' Compensation DRP as follows:

- ▶ Review and comment on the Request for Proposals (RFP);
- ▶ Attend the Bidders' Conference;
- ▶ Review, comment and provide feedback on the proposals submitted by potential vendors in response to the RFP;
- ▶ Attend and take an active role in the Management Interviews;

- ▶ Attend any site visits planned in conjunction with the RFP process;
- ▶ Consult on the selection of the finalist vendor;
- ▶ Review and comment on the employee communication material developed for the Program including the DRP appeal request form;
- ▶ Review reports produced by the Program Administrator which monitor the ongoing administration of the Program;
- ▶ Participate in joint educational conferences with the agencies and facilities;
- ▶ Establish a schedule for periodic reviews of the Medical Evaluation Program;
- ▶ Provide the Program Administrator with copies of Department of Civil Service job descriptions.



Linda Angello, Director  
For the State of New York



Brian Shanagher, President  
For NYSCOPBA

Dated: May 18, 2000

Dated: MAY 18, 2000

PAR 2 12/94

<b>NYSP</b>	<b>DIVISION INTERIM ORDER</b>	<b>IO 01 - 10</b>
TO:	All Members	Date Issued
FROM:	SUPERINTENDENT JAMES W. MCMAHON	5/31/01
SUBJECT:	<b>MODIFIED DUTY ASSIGNMENTS - MANAGEMENT CONFIDENTIAL MEMBERS - MEMBERS OF THE SUPERVISORS' UNIT AND MEMBERS OF THE BCI UNIT</b>	8 Revised Pages

This Interim Order supersedes and replaces current Instructions contained in the NYSP Administrative Manual - Article 8 - ATTENDANCE AND LEAVE, Section 8O, titled: MODIFIED DUTY ASSIGNMENTS - MANAGEMENT CONFIDENTIAL MEMBERS and Section 8P, titled: MODIFIED DUTY ASSIGNMENTS - MEMBERS OF THE SUPERVISORS' UNIT AND MEMBERS OF THE BCI UNIT, by combining both Sections into one. This Interim Order also voids Special Order No. 817, File 14, S. P. Albany NY, dated April 11, 2001 same subject.

A Pointer (➤) is provided to indicate new or revised material.

➤80 **MODIFIED DUTY ASSIGNMENTS - MANAGEMENT CONFIDENTIAL MEMBERS - MEMBERS OF THE SUPERVISORS' UNIT AND MEMBERS OF THE BCI UNIT**

801 Policy

The parties recognize that the traditional policy of requiring Members to be fit for full and strenuous duty may create a hardship for both the Division as well as Members who are fit for partial duty, but nonetheless, are not permitted to work. This can result in substantial depletion of a Member's Sick Leave Accruals as well as totally deprive the Division of the services of a Member who otherwise could make some contribution to the operations of the Division. Therefore, it is the policy of the Division to permit and assign Members recovering from both on and off-duty illnesses or injuries to modified duty assignments when such Members meet the criteria for such assignment and the best interests of the Division are served. Modified duty assignments are not, however, designed nor intended to be for a long-term duration.

802 Qualifications For Consideration

A Member may qualify for consideration for assignment to modified duty in conjunction with an on or off-duty injury or illness when such Member has been deemed to be capable of performing modified duty as defined herein.

**803 Modified Duty Defined**

Modified duty shall consist of assignments to perform administrative duties, including but not limited to: desk duty, records management, inventory control, noncriminal investigations, communications and other tasks not related to patrol functions, field supervision, or active criminal case investigation.

**804 Level Of Fitness Criteria**

- (a) To qualify for assignments to modified duty, Members recovering from illnesses or injuries must meet ALL of the following criteria:
- (1) In cases of on-duty illness or injury, a Member must be found to be 50% or less disabled after determination by a State Insurance Fund Physician.
  - (2) In cases of an off-duty illness or injury, the Member must present certification from Member's attending physician indicating 50% or less disability and ability to perform modified duty.
  - (3) The Member must not be infectious or contagious.
  - (4) The Member must be capable of self-medicating where appropriate.
  - (5) The Member must be capable of reading, writing and comprehending written and verbal communications.

**805 Requesting Modified Duty Assignment****(a) Off-Duty Illness Or Injury**

- A Member may request consideration for a modified duty assignment by Memorandum through Channels. Enclosed with this Memorandum must be a written certification from the Member's attending physician that the Member meets the criteria for assignment to modified duty. Any expense incurred in connection with this process shall be the responsibility of the Member.

**(b) On-Duty Illness Or Injury**

- In those instances where the First Deputy Superintendent believes that the Member may be qualified to perform modified duty, the case

will be referred to the Division Physician for review. Should the Division Physician concur that such assignment appears to be appropriate, the matter will then be referred to the State Insurance Fund for a level of disability determination. Where it is determined by the State Insurance Fund that the member is 50% or less disabled, and all other criteria are met, and upon final approval of the Division Physician, the Member shall be assigned to perform modified duty.

806 Approval Procedure

The Division Physician shall review each individual case where either the Division or the Member requests a modified duty assignment and may, where appropriate, direct that additional information be obtained from the Member's attending physician prior to making a determination. The Division Physician shall have the sole authority to determine eligibility for modified duty, however, the Member shall have the right to utilize the provisions of the Dispute Resolution Process as set forth below.

807 Termination Of Assignment

(a) Modified duty assignments shall be terminated upon any of the following:

- (1) The Division Physician determines that assignment to modified duty is not in the best interests of either the Member or the Division from a medical standpoint; or
- (2) In cases involving an off-duty illness or injury, if the Member requests such assignment be discontinued or fails to comply with a request by the Division Physician for updated medical examinations, reports and/or certification from the Member's attending physician(s) to continue in a modified duty assignment; or
- (3) The Member has reached the maximum allowable time for a modified duty assignment or fails to meet criteria specified for extending modified duty; or
- (4) The Member is placed on involuntary leave under Rule 13; or
- (5) The Member is determined to be capable of performing full and strenuous duty.

808 Assignment To Modified Duty

(a) On-Duty Injury Or Illness

- (1) A Member found capable of and approved for performing modified duty shall be assigned to report for such duty by the First Deputy Superintendent or designee. In the event the Member contests such assignment, the provisions of the Dispute Resolution Process, as

outlined herein, shall apply.

(b) Off-Duty Illness Or Injury

- A Member who has requested modified duty in connection with an off-duty illness or injury shall be advised of the determination by Memorandum from the Office of the First Deputy Superintendent. In the event that the Member's request for assignment to modified duty is denied, the Member may opt to utilize the Dispute Resolution Process.

809 Limitations

- (a) The Division shall have the sole right to determine the hours, location, duration and type of modified duty to be performed, however, every reasonable effort will be made to assign the Member as close to his or her assigned duty Station as possible. A Member shall not be assigned more than 60 miles from his or her official duty Station without the Member's consent. A Member assigned more than 35 miles from his or her official duty Station will be entitled to mileage or subsistence in accordance with Articles 2 and 10 of the New York State Police Administrative Manual and as otherwise provided for in accordance with law, rule, regulation or collective bargaining agreement.
- (b) Modified duty will be approved for the duration of the disability or 90 calendar days, whichever is less. Any extensions of modified duty will be approved under the same limitations.
- (c) In no instance may a Member work in a modified duty capacity for more than 270 calendar days of any one (1) year period, nor may any Member work more than 360 calendar days in any three (3) year period. This limitation shall apply both in instances of single or multiple illnesses or injuries during these time periods.
- (d) Members assigned to modified duty shall not be eligible to earn overtime. Contractual benefits associated with compensatory allowances will not be affected by assignment to modified duty.
- (e) Members assigned to modified duty shall not be assigned to normal road patrol, criminal investigations requiring field assignments or field supervisory coverage.
- (f) The Member's Troop or Detail Commander shall determine the appropriate dress code during the Member's modified duty assignment.



8010 Assignment Extensions(a) On-Duty Illness Or Injury

- (1) In those instances where the First Deputy Superintendent deems that continued modified duty assignment is in the best interests of the Division and the case appears to qualify for extension, the matter will be referred to the Division Physician for further review. Should the Division Physician determine that further medical examinations are necessary, appropriate arrangements shall be made for an examination to be conducted at state expense by a State Insurance Fund Medical Consultant.
- (2) Upon final determination, the Member will either be continued on modified duty, returned to full-duty status or placed on workers' compensation leave as appropriate. In the event a Member is denied an extension of modified duty and wishes to contest that determination, the provisions of the Dispute Resolution Process shall apply.

(b) Off-Duty Illness Or Injury

- A Member shall forward a request for consideration of extension of a modified duty assignment to the First Deputy Superintendent at least fifteen (15) working days prior to the expiration of the currently approved modified duty assignment. Included with the request must be a written certification by the Member's attending physician indicating that the Member continues to meet all the criteria for assignment to modified duty for a specific time period. The review process may also require updated medical examinations and/or reports to be obtained at the Member's expense to enable the Division Physician to make a proper determination in connection with such request. The Member will be advised by Memorandum from the First Deputy Superintendent of the Division Physician's determination and will either continue on modified duty assignment, be returned to full duty or be placed in the appropriate leave status. In the event that a Member is denied an extension of a modified duty assignment and wishes to contest that determination, the provisions of the Dispute Resolution Process shall apply.

**8011 Dispute Resolution Process**

A Member who wishes to contest a modified duty determination based on the degree of disability may do so by utilizing the Dispute Resolution Process as outlined below. This process shall consist of a review of medical documentation submitted by all parties to an independent third party medical consultant retained by the Division for such purpose.

(a) On-Duty Injuries Or Illnesses: A Member who wishes to contest a modified duty determination as described above must notify the First Deputy Superintendent by Memorandum through Channels of his/her intent to appeal the modified duty determination within five (5) working days from the date that the Member is advised in writing of the modified duty determination. The Member must also provide an appeal form to the Member's attending physician. The Member's attending physician must complete the form and submit it to the third party consultant, along with any medical records deemed relevant in support of the attending physician's opinion with regard to the Member's degree of disability, within fifteen (15) working days from the date that the Member is advised in writing of the modified duty determination. If the Member appeals the modified duty determination, the Member shall not be required to report for a modified duty assignment until completion of the Dispute Resolution Process. In all cases, a Member on workers' compensation leave shall remain in that status until the Dispute Resolution Process is completed.

- The Division and the State Insurance Fund shall also provide the third party consultant with the necessary medical documentation to support their degree of disability determination within fifteen (15) working days of receipt of the Member's Memorandum contesting assignment to modified duty.
- In the event that the third party consultant finds the Member capable of performing modified duty, the Member shall be assigned to modified duty as soon as practicable.
- In the event that the third party consultant finds that no disability exists, the Member will be ordered to return to full duty.
- In the event that the third party consultant finds the Member incapable of continuing in a modified duty assignment, the assignment shall be rescinded. The Member shall be entitled to leave under Regulation 5.12 of the New York State Police Administrative Manual.

(b) **Off-Duty Injuries Or Illnesses:** A Member who wishes to contest a modified duty determination concerning an off-duty injury or illness shall also have the right to utilize the Dispute Resolution Process as outlined above. If a Member appeals a modified duty determination, the Member shall not be entitled to report for duty until completion of the Dispute Resolution Process.

- The Division shall also provide the third party consultant with the necessary medical documentation to support their degree of disability determination within fifteen (15) working days of receipt of the Member's Memorandum contesting assignment to modified duty.
- In the event that the third party consultant determines that the Member is 50% or less disabled, the Member will be assigned to modified duty as soon as practicable and any leave accruals that the Member utilized while awaiting a determination from the Dispute Resolution Process will be restored.
- If the third party consultant finds that the Member is incapable of performing modified duty, the Member shall remain on sick leave. After a minimum of thirty (30) days has elapsed from the Division Physician's determination or the third party consultant's determination, whichever is greater, the Member may submit additional medical documentation through Channels to the Division Physician and again request assignment to modified duty.

8012 **Leave Entitlement:** Members while on modified duty assignments as a result of an on-duty injury shall not be charged with use of Compensation Leave. Members while on modified duty assignments as a result of an off-duty injury shall not be charged with use of sick leave or other leave credits.

8013 **Remedies:** Determinations regarding a Member's degree of disability or ability to perform modified duty shall not be subject to the grievance process whether contract or non-contract. Disputes regarding the application or interpretation of the language of this agreement are subject to the contract grievance procedures set forth in Article 15 of the Collective Bargaining Agreement.

8014 **Outside Employment:** Members on modified duty assignment who have been approved for outside employment are not precluded from continuing to work such jobs except where a particular job requires skills which the Member is incapable of performing due to his or her injury.

8015 **Modified Duty For Other State Police Bargaining Units:** In the event the modified duty policy in some form is applied to other bargaining units within the Division, Management Confidential, the PBA and/or NYSPLA may elect to extend and apply

any of the particular terms, thereof, to the Members covered by this agreement, subject to the Division's operational needs.

- 8016 Promotion While On Modified Duty: Members on modified duty assignment shall not be precluded from promotional appointment from an eligible list, or from any other promotional opportunity, if there is a medical certification that the Member is expected to return to full and strenuous duty within thirty (30) days of the date of the promotion.
- 8017 Term Of Agreement: Unless terminated pursuant to the paragraph below, this Agreement shall expire eighteen (18) months from the date of its execution for the bargaining units PBA and NYSPIA, unless extended by mutual agreement of the parties.
- 8018 Terminating Event: This Agreement shall terminate immediately and automatically if the New York State Retirement System by decision, interpretation or regulation, determines, with respect to applications for disability retirement filed by or on behalf of Management Confidential Members, Members of the Supervisors' Unit or Members of the BCI Unit, that one or more Members are not permanently incapacitated from the performance of duty based on the availability of a modified duty assignment or on the terms of this Agreement itself.
- 8019 Effective Date: This Agreement took effect for Management Confidential Members on March 31, 2000 and on April 1, 2001, for Members of the Supervisors' Unit and Members of the BCI Unit.

NR21294

<b>NYSP</b>	<b>DIVISION INTERIM ORDER</b>	<b>IO 2000 -</b>
<b>TO:</b>	All Members	Date Issued
<b>FROM:</b>	SUPERINTENDENT JAMES W. MCMAHON	6 Revised Pages
<b>SUBJECT:</b>	<b>MODIFIED DUTY ASSIGNMENTS - MANAGEMENT CONFIDENTIAL MEMBERS</b>	

This Interim Order supplements current instructions to Article 8 - ATTENDANCE AND LEAVE in the NYSP Administrative Manual by adding a new Section 80 titled: MODIFIED DUTY ASSIGNMENTS - MANAGEMENT CONFIDENTIAL MEMBERS.

This new Section outlines a revised policy implementing modified duty for sworn Management/Confidential Unit Members under certain circumstances while those Members are recovering from either on or off-duty illnesses or injuries. This policy will afford benefits for both the Members and the Division by permitting such Members to perform administrative duties during a limited period thereby eliminating the need to utilize individual leave accruals or compensation leave while enhancing the overall operations of the Division.

A pointer (\*) indicates the entire Section is new.

\* 80 MODIFIED DUTY ASSIGNMENTS - MANAGEMENT CONFIDENTIAL MEMBERS

801 Policy

The Division recognizes that the traditional policy of requiring Members to be fit for full and strenuous duty may create a hardship for both the Division as well as Members who are fit for partial duty but nonetheless are not permitted to work. This can result in substantial depletion of a Member's sick leave accruals as well as totally deprive the Division of the services of a Member who otherwise could make some contribution to the operations of the Division. Therefore, it is the policy of the Division to permit and assign Members recovering from both on and off-duty illnesses or injuries to modified duty assignments when such Members meet the criteria for such assignment and the best interests of the Division are served. Modified duty assignments are not, however, designed nor intended to be for a long-term duration.

802 Qualifications For Consideration

Members may qualify for consideration for assignment to modified duty in conjunction with an on or off-duty injury or illness when such Member has been deemed to be capable of performing modified duty as defined herein.

**803 Modified Duty Defined**

Modified duty shall consist of assignments to perform administrative duties including but not limited to: desk duty, records management, inventory control, noncriminal investigations, communications and other tasks not related to patrol functions, Field supervision, or active criminal case investigation.

**804 Level Of Fitness Criteria**

(a) To qualify for assignment to modified duty, Members recovering from on-duty illnesses or injuries must meet ALL of the following criteria:

- (1) In cases of on-duty illness or injury be found to be less than 50% disabled after determination by a State Insurance Fund Physician, or in the case of an off-duty illness or injury, present certification from a primary physician indicating less than 50% disability and ability to perform modified duty,
- (2) Capable of self medicating where appropriate;
- (3) Not be infectious or contagious; and
- (4) Be capable of reading, writing and comprehending written and verbal communications.

**805 Requesting Modified Duty Assignment****(a) Off-Duty Illness Or Injury**

Members may request consideration for modified duty assignment by Memorandum through Channels. Enclosed with this memorandum must be a written certification from the Member's primary physician that the Member meets the criteria for assignment to modified duty. Any expense incurred in connection with this process shall be the responsibility of the Member.

**(b) On-Duty Illness Or Injury**

In those instances where the First Deputy Superintendent believes that the Member may be qualified to perform modified duty, the case will be referred to the Division Physician for review. Should the Division Physician concur that such assignment appears to be appropriate, the matter will then be

referred to the State Insurance Fund for a level of disability determination. Where it is determined by the State Insurance Fund that the Member is less than 50% disabled, and all other criteria are met, and upon final approval of the Division Physician, the Member shall be assigned to perform modified duty.

#### 806 Approval Procedure

The Division Physician shall review each individual case where either the Division or the Member requests a modified duty assignment and may, where appropriate, direct that additional information from medical practitioners be provided by the Member. The Division Physician shall have the sole authority to determine eligibility for modified duty. Disapproval determinations by the Division Physician are final and not subject to any appeal process; however, the Member or the Division may resubmit a similar request for reconsideration after 30 calendar days from a negative determination when new medical documentation supports such a request for reconsideration. In those instances where the request is denied, the Member shall continue on compensatory leave or leave accruals as appropriate.

#### 807 Termination of Assignment

- (a) Modified duty assignments shall be terminated upon any of the following:
- (1) The Division Physician determines that assignment to modified duty is not medically advised in the best interest of either the Member or the Division.
  - (2) The Member, in cases involving an off-duty illness or injury, requests such assignment be discontinued or fails to comply with a request by the Division Physician for updated medical examinations, reports and/or certification from their personal physician(s) to continue in modified duty assignments.
  - (3) The Member has reached the maximum allowable time for modified duty assignment or fails to meet criteria specified for extending modified duty.
  - (4) The Member is placed on involuntary leave under Rule 13.
  - (5) The Member is determined to be capable of performing full and strenuous duty.

#### 808 Assignment To Modified Duty

(a) On-Duty Injury Or Illness

Members found capable of and approved for performing modified duty shall be assigned to report for such duty by the First Deputy Superintendent or his designee. In the event the Member contests such assignment, the provisions of the Dispute Resolution Process, as outlined, shall apply.

(b) Off-Duty Illness Or Injury

Members approved for modified duty in connection with an off-duty illness or injury shall be advised by Memorandum from the Office of the First Deputy Superintendent.

809 Limitations

- (a) The Division shall have the sole right to determine the hours, location, duration and type of modified duty to be performed. Where appropriate, Members will be entitled to per diem.
- (b) Modified duty will be approved for the duration of the disability or 90 calendar days, whichever is less. Any extensions of modified duty will be approved under the same limitations.
- (c) In no instance may a Member work in a modified duty capacity for more than 270 calendar days of any 1 year period, nor may any Member work more than 365 calendar days in any 3 year period. This limitation shall apply both in instances of single or multiple illnesses or injuries during these time periods.
- (d) Members assigned to modified duty shall not be eligible to earn overtime.
- (e) Members assigned to modified duty shall not be assigned to normal road patrol; criminal investigations requiring field assignments; or Field supervisory coverage.

8010 Assignment Extensions

(a) On-Duty Illness Or Injury

- (1) In those instances where the First Deputy Superintendent deems that continued modified duty assignment is in the best interest of the Division and the case appears to qualify for extension, the matter will be referred to the Division Physician for further review. Should the Division Physician determine that further medical examinations are



necessary, appropriate arrangements shall be made for the examinations to be conducted at state expense.

- (2) Upon final determination, the Member will either be continued on modified duty or placed on compensation leave as appropriate. In the event a Member is ordered to continue on modified duty and wishes to contest that determination, the provisions of the Dispute Resolution Process shall apply.

(b) Off-Duty Illness Or Injury

Members shall forward their request for consideration of extension of a modified duty assignment to the First Deputy Superintendent at least 15 calendar days prior to the expiration of the currently approved modified duty assignment. Included with the request must be a written certification by the Member's primary physician indicating that the Member continues to meet all the criteria for assignment to modified duty for a specific time period. The review process may also require updated medical examinations and/or reports to be obtained at the Member's expense to enable the Division Physician to make a proper recommendation in connection with such request. The Member will be advised by Memorandum from the First Deputy Superintendent of the Division Physician's determination and will either continue on modified duty assignment or return to the appropriate leave status.

8011 Dispute Resolution Process

- (a) Members wishing to contest a determination that they are capable of performing modified duty may do so based upon their assertion that they are 50% or more disabled. Such may be done through the Dispute Resolution Process as outlined in this article. This process shall consist of a review of medical documentation submitted by all parties to an independent third party medical consultant retained by the Division for such purpose.
- (b) Members assigned to perform modified duty, and wishing to contest assignment based upon their degree of disability, must submit a Memorandum no later than 5 calendar days from the date they are assigned to modified duty, advising of their intention to avail themselves of the Dispute Resolution Process. The assignment to modified duty shall then be suspended until such time as a determination is rendered under the Dispute Resolution Process. Members assigned to modified duty shall not be entitled to leave under Regulation 5.12 of the New York State Police Rules and Regulations or applicable collective bargaining agreements pending final determination of the Dispute Resolution Process, but shall be entitled

to draw upon any accumulated annual, personal or sick leave credits. The Member may also elect to continue performing modified duty during the pendency of the Dispute Resolution Process.

- (c) A Member contesting assignment to modified duty must provide an appeal form to the Member's treating physician(s) and the treating physician(s) must complete the form and submit it to the third party consultant, along with any medical records deemed relevant in support of the physician's opinion with regard to the Member's degree of disability. Said appeal form and documentation must be submitted to the designated consultant within 10 calendar days of submitting the Memorandum contesting assignment to modified duty.
- (d) The Division and the State Insurance Fund shall provide the third party consultant with the necessary medical documentation to support their degree of disability determination within 10 calendar days of receipt of the Member's Memorandum contesting assignment to modified duty.
- (e) In the event that the third party consultant finds the Member capable of performing modified duty, the Member shall immediately report for, or continue on, modified duty, as is appropriate.
- (f) In the event that the third party consultant finds the Member incapable of performing modified duty, the assignment shall be rescinded. The Member shall be entitled to leave under Regulation 5.12 of the New York State Police Rules and Regulations and have any sick leave credits or salary actually lost because of the order restored.

## Overview of DRP for NYS Division of State Police Employees

Key Requirements	Modifications
<p>Excludes pregnancy (months 5 – 9)                      Separate program under Article 2K-                      Temporary Reassignment of Pregnant                      Member – assignment to administrative                      duty provided that the member’s attending                      physician continues to certify member fit                      for full duty</p>	
Eligibility	Medical Requirements
<ol style="list-style-type: none"> <li>1. Certification from Treating Physician indicating 50% or less disability and able to perform modified duty</li> <li>2. Not infectious or contagious</li> <li>3. Capable of self medicating</li> <li>4. Capable of reading, writing and comprehending written and verbal communications</li> </ol>	<ol style="list-style-type: none"> <li>1. 50% or less disabled after determination by SIF physician</li> <li>2. Not infectious or contagious</li> <li>3. Capable of self medicating</li> <li>4. Capable of reading, writing and comprehending written and verbal communications</li> </ol>
Requesting Modified Duty Assignment	Requesting Modified Duty Assignment
<ol style="list-style-type: none"> <li>1. Member may request through channels</li> <li>2. Include written certification from Member’s attending Physician</li> </ol>	<ol style="list-style-type: none"> <li>1. First Deputy Superintendent believes member may be qualified or member requests modified duty assignment</li> <li>2. Case referred to Division Physician for review</li> <li>3. Division Physician concurs, assignment appropriate</li> <li>4. Referred to Fund for level of disability determination</li> <li>5. Evaluating Physician determines 50% or less disabled</li> <li>6. Final approval by Division Physician</li> </ol>

<ol style="list-style-type: none"> <li>1. Division Physician shall review each case</li> <li>2. Division Physician shall have <b>sole authority</b> to determine eligibility for modified duty</li> <li>3. Member shall have right to utilize the DRP as set forth</li> </ol>	<ol style="list-style-type: none"> <li>1. Division Physician shall review each case</li> <li>2. Division Physician shall have <b>sole authority</b> to determine eligibility for modified duty</li> <li>3. Member shall have right to utilize the DRP as set forth</li> </ol>
<ol style="list-style-type: none"> <li>1. Division Physician determines assignment is not in the best interests..., <b>or</b></li> <li>2. Member requests the discontinuation of such assignment or fails to comply with Division Physician request, <b>or</b></li> <li>3. Member has reached maximum allowable time or fails to meet criteria for extending, <b>or</b></li> <li>4. Member is placed on involuntary leave (Rule 13), <b>or</b></li> <li>5. Member is determined to be capable of performing full and strenuous duty</li> <li>6. Member shall have right to utilize DRP as set forth</li> </ol>	<ol style="list-style-type: none"> <li>1. Division Physician determines assignment is not in the best interests...,<b>or</b></li> <li>2. Member has reached maximum allowable time or fails to meet criteria for extending, <b>or</b></li> <li>3. Member placed on involuntary leave (Rule 13), <b>or</b></li> <li>4. Member is determined to be capable of performing full and strenuous duty</li> <li>5. Member shall have right to utilize DRP as set forth</li> </ol>
<ol style="list-style-type: none"> <li>1. Member who has requested modified duty shall be advised of determination by Office of the First Deputy Superintendent</li> <li>2. Member whose request is denied may opt to use DRP</li> </ol>	<ol style="list-style-type: none"> <li>1. Member found capable of and approved for performing modified duty shall be assigned to report for such duty by the First Deputy Superintendent or his designee</li> <li>2. In the event Member contests such assignment, DRP shall apply</li> </ol>

<ol style="list-style-type: none"> <li>1. At least <b>15 working days</b> prior to expiration of currently approved modified duty assignment. Member forwards request for extension, which includes written certification from Member's attending Physician</li> <li>2. Member advised by First Deputy Superintendent of Division Physician's determination to:             <ul style="list-style-type: none"> <li>• continue on modified duty assignment,</li> <li>• returned to full duty; or</li> <li>• placed in appropriate leave status</li> </ul> </li> <li>3. Member denied extension, wishes to contest determination - DRP shall apply</li> </ol>	<ol style="list-style-type: none"> <li>1. First Deputy Superintendent deems that continued modified duty assignment is in the best interests of the Division</li> <li>2. Referred to Division Physician for further review</li> <li>3. If Division Physician determines additional medical information is necessary, SIF exam is arranged</li> <li>4. Member either continued on modified duty, returned to full duty or placed on WC leave</li> <li>5. Member denied extension, wishes to contest determination – DRP shall apply</li> </ol>
<ol style="list-style-type: none"> <li>1. Within <b>5 working days</b> of the date Member is advised in writing of the modified duty determination, Member must notify First Deputy Superintendent of intent to Appeal. Member must also provide Appeal form to attending Physician</li> <li>2. Attending Physician must submit Appeal to IPRO <b>within 15 working days from date Member is advised</b> in writing of the modified duty determination. Division and Division-contracted physician will provide documentation <b>within 15 working days of receipt of Member's notice</b> contesting assignment</li> </ol>	<ol style="list-style-type: none"> <li>1. Within <b>5 working days</b> of the date Member is advised in writing of the modified duty determination, Member must notify First Deputy Superintendent of intent to Appeal. Member must also provide Appeal form to attending Physician</li> <li>2. Attending Physician must submit Appeal to IPRO <b>within 15 working days from date Member is advised</b> in writing of the modified duty determination. Division and the SIF will provide documentation <b>within 15 working days of receipt of Member's notice</b> contesting assignment</li> </ol>

<p>3. If the Contractor determines Member to be 50% or less disabled, Member assigned to modified duty</p> <p>4. If the Contractor finds Member greater than 50% disabled, Member shall remain on sick leave</p> <p>5. After <b>minimum of 30 days</b> from Division Physician's determination or the Contractor's determination, whichever is greater, Member may submit additional medical documentation and request modified duty assignment.</p>	<p>3. If the Contractor finds member to be 50 % or less disabled, Member is assigned to modified duty</p> <p>4. If the Contractor finds no disability exists, Member returns to full duty</p> <p>5. If the Contractor finds Member greater than 50% disabled, assignment rescinded - leave under Reg 5.12</p>
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Exhibits II. F contains other information which further outlines the programmatic details of DRP for Group 2.

## Dispute Resolution Program Summary

<b>Year</b>	<b>Number of Work Related Accidents<sup>1</sup></b>	<b>DRP Reviews Performed<sup>2</sup></b>	<b>Non-Valid Appeals (no review)<sup>3</sup></b>
1999	8,314	68	(not available)
2000	7,857	69	(not available)
2001	8,005	49	(not available)
2002	7,676	59	35
2003	7,313	58	22
2004	6,858	57	21

<sup>1</sup> Includes work related accidents in the Security Services, Security Supervisors, Agency Law Enforcement Services, State Police Investigators, State Police Commissioned Officers and Non-Commissioned Officers Units and the State Police Managerial/Confidential Group.

<sup>2</sup> Appeals met Appeal Form filing requirements and had appropriate documentation and were subsequently reviewed by the existing contractor.

<sup>3</sup> Appeal sent to DRP review organization but information did not meet Appeal Form filing requirements and/or did not include appropriate documentation for review.

## Dispute Resolution Program Cost Proposal

Year	Cost Per Valid Appeal
1	
2	
3	
4	
5	

### INSTRUCTIONS:

1. Offerors should complete the chart above by proposing a fee to be paid the Offeror for each Valid Appeal reviewed. All costs associated with the implementation of the DRP Program Review process should be incorporated in the development of the cost per Valid Appeal.
2. For purposes of developing the cost proposal, the Offeror should assume that the number of reviews to be completed shall be consistent with the historical numbers presented in Exhibit III.A. DCS can not and shall not guarantee the number of Appeals under the Agreement resulting from the RFP.



## Dispute Resolution Program Summary

<b>Year</b>	<b>Number of Work Related Accidents<sup>1</sup></b>	<b>DRP Reviews Performed<sup>2</sup></b>	<b>Non-Valid Appeals (no review)<sup>3</sup></b>
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**Dispute Resolution Program Cost Proposal**

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2. For purposes of developing the cost proposal, the Offeror should assume that the number of reviews to be completed shall be consistent with the historical numbers presented in Exhibit III.A. DCS can not and shall not guarantee the number of Appeals under the Agreement resulting from the RFP.