

**NEW YORK STATE  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE  
DIVISION OF DISABILITY DETERMINATIONS**



**Andrew M. Cuomo  
Governor**

**Elizabeth R. Berlin  
Executive Deputy Commissioner**

**CONSULTATIVE EXAMINATION CONTRACT MEDICAL  
PROVIDER**

**REQUEST FOR PROPOSAL**

**SYRACUSE, BINGHAMTON, POUGHKEEPSIE/NEWBURGH**

**Prepared by:**

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**April 4, 2012**

CE CONTRACT MEDICAL PROVIDER RFP  
Syracuse, Binghamton, Poughkeepsie

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**Glossary of Terms**  
(Alphabetical Order)

|  |   |
|--|---|
| <b>Bidder/Offeror</b>                            | Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to a Bid Solicitation. The term Bidder shall also include the term "offeror." In the case of negotiated Contracts, "Bidder" shall refer to the "Contractor."   |
| <b>Contractor</b>                                | Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.   |
| <b>Non-Responsibility Determination</b>          | A finding that a Bidder/Offeror knowingly and willfully violated the requirements about permissible contacts (see RFP Section I. General Provisions, E. Point of Contact for this Procurement) Such a finding can result in a rejection of a contract award and, in the event of two findings within a four year period, the Offeror would become debarred from obtaining New York State contracts.                       |
| <b>Personally Identifiable Information (PII)</b> | Any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information." |
| <b>Procurement Period</b>                        | The period from the intent to solicit offers/bids through final award and approval of the procurement contract by the Office of the State Comptroller.  |
| <b>Reportable PII Loss</b>                       | Any information in paper or electronic format containing PII collected and maintained as part of SSA's business processes which the Agency has reason to believe has left its custody, or has been disclosed to an unauthorized individual or entity, in circumstances that are likely to lead to its misuse."  |
| <b>Subcontractor</b>                             | Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.   |
| <b>Vendor</b>                                    | Any organization or person who sells.   |

## I. GENERAL PROVISIONS

### A. Purpose

The purpose of this Request for Proposal (RFP) issued by the Office of Temporary and Disability Assistance (hereinafter referred to as OTDA) is to solicit proposals for the establishment of one contract medical provider in the Syracuse, one in Binghamton, and one in Poughkeepsie/Newburgh for the purpose of performing medical examinations and ancillary testing of claimants applying for or currently receiving Social Security disability benefits. If Offerors choose to bid on more than one site, a separate technical and financial proposal must be submitted for each site.

### B. Contract Duration

The term of the contracts resulting from this RFP is to be for the period February 1, 2013 through January 31, 2016. At the end of the three year period, OTDA reserves the right to negotiate one, 2-year contract extension.

### C. Timetable

|  |                |
|--|----------------|
| 1. Release of RFP                        | April 4, 2012  |
| 2. Final Date for Receipt of Questions   | April 13, 2012 |
| 3. Official Answers to Questions         | April 20, 2012 |
| 4. Closing Date for Receipt of Proposals | May 9, 2012    |

OTDA reserves the right, upon notice to the Offerors, to modify any of the cited dates.

### D. Questions Regarding this RFP

All questions regarding this procurement, to be given consideration by OTDA, must be submitted in writing to the primary point of contact, as identified in Section I.E. herein, and received by 1:00 p.m. on April 13, 2012 in accordance with the timetable in Section I.C. of this RFP. Any questions received after that date and time will be answered only if OTDA determines that the interests of the procurement will be served by responding to such questions, given the late date by which Offerors will be receiving a response before the closing date for receipt of proposals.

Each question should, to the degree possible, cite the specific RFP section and paragraph number to which it refers. OTDA will make a good faith effort to post its official answers to the questions on OTDA's website at [http://www.otda.ny.gov/main/cgo/procurement\\_bid.htm](http://www.otda.ny.gov/main/cgo/procurement_bid.htm) by the date indicated in Section I.C. to all Offerors. If you are unable to access the Questions and Answers, contact Melinda Kuiken at 518-473-0360 or [Melinda.Kuiken@ssa.gov](mailto:Melinda.Kuiken@ssa.gov) to receive a copy.

Questions and answers of a proprietary nature to a particular Offeror will be disclosed to other prospective Offerors in accordance with Section I.I.1. of this RFP.

### E. Point of Contact for this Procurement

Pursuant to State Finance Law §§139-j and 139-k, this RFP includes and imposes certain restrictions on communications between OTDA and an Offeror during the procurement process. OTDA is required to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting government agencies about procurements. Offerors are restricted from making oral, written or electronic contacts with OTDA

employees under circumstances where a reasonable person would infer that the communication was intended to influence the government procurement, e.g., an attempt to persuade the agency to award a bid to a particular offeror, other than to the point of contact (POC) as designated below until Office of the State Comptroller (OSC) award approval. Statutory exceptions to Offeror contact with other than the designated point of contact set forth in State Finance Law §139-j (3) (a) are listed below:

- Submission of a written proposal in response to this RFP;
- Participation in any conference including the oral presentations described herein;
- Official Questions and Answers;
- Complaints filed by an Offeror to OTDA's Counsel's Office stating that the designated point of contact has failed to respond in a timely manner (any such complaints should be addressed to: Maria Vidal, General Counsel, 40 North Pearl Street, 16C, Albany, New York 12243);
- Negotiations following tentative award;
- Debriefings with Offerors that were not award recipients;
- Filing of an appeal or protest.

OTDA employees other than the designated POC who are contacted by an Offeror are required to obtain and record certain information when contacted that will be referred to the POC for inclusion in the procurement record. Impermissible contacts that are knowingly or willfully made could result in a finding of non-responsibility against the Offeror. Such a finding can result in a rejection of a contract award and, in the event of two findings within a four year period, the Offeror would become debarred from obtaining New York State contracts. Further information about these requirements can be found at the following link:

<http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The Procurement Lobbying Act also requires that every procurement over \$15,000 include a certification by the Offeror that all information provided to the agency is complete, true, and accurate with regard to prior non-responsibility determinations within the past four years based on (i) impermissible contacts or other violations of State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.

**The primary point of contact for this Procurement is:**

Mr. Lawrence Rockefeller  
Director of Budget and Finance  
New York State Office of Temporary & Disability Assistance  
Division of Disability Determinations  
One Commerce Plaza, 10<sup>th</sup> Floor  
99 Washington Avenue  
Albany, New York 12260

Telephone #: 518-473-0360  
Fax #: 518-408-3833

Other permissible points of contact for the Offeror:

Cynthia Hopko  
Telephone # 518-486-6352  
Fax # 518-474-3233

Melinda Kuiken  
Telephone #518-473-0360  
Fax # 518-408-3833

F. Identification and Submission of Proposals

The proposals shall be identified as the "New York State Office of Temporary and Disability Assistance - Consultative Examination Contract Medical Provider – Syracuse, Binghamton, Poughkeepsie."

Proposals must be received no later than 3:00 p.m. May 9, 2012. Late proposals will be accepted at the discretion of OTDA. The proposal must follow the format presented in Section III (Offeror's Response) of this RFP.

The Offeror's proposal and all provisions of the offer must remain in effect for one hundred eighty days and must be signed by an official authorized to bind the Offeror.

As specified in Section III of this RFP, the Offeror's proposal must be organized into separately sealed volumes.

Six copies of the financial proposal (sealed separately from the technical proposal) and six copies of the technical proposal (sealed separately from the financial proposal) must be delivered or mailed return receipt requested to:

Ms. Cynthia A. Hopko  
Bureau of Contract Management  
New York State Office of Temporary and Disability Assistance  
40 North Pearl Street, 13<sup>th</sup> Floor  
Albany, NY 12243

Any contact by prospective Offerors or their agents regarding the delivery location or directions for delivery may be addressed to Cynthia A. Hopko at her address above, or by telephone at (518) 486-6352.

Upon delivery of proposals, a date and time-stamped receipt will be issued upon request. All proposals become the property of OTDA and will not be returned to the Offeror.

G. Contact with Employees

1. From the release date of this RFP until the resultant contract is approved by the Office of the State Comptroller, all Offeror contacts related to this procurement with Office staff must be authorized by the Project Director, identified in Section I.E. of this RFP.
2. Prospective Offerors may not approach Office personnel with offers of employment during the procurement period. Any Offeror who is aware of an Office employee who is considering employment with the Offeror should advise the Project Director forthwith.

H. Incurred Costs

The State of New York shall not be liable for any costs incurred by an Offeror in the preparation and production of a proposal. Any work performed prior to the issuance of a fully executed contract or delivery of an order by OTDA to the contractor will be done only to the degree the Contractor voluntarily assumes the risk of nonpayment.

I. Public Information Requirements

1. All the proposals upon submission will become the property of OTDA. OTDA will have the right to disclose all or any part of a proposal to public inspection based on its determination of what disclosure will serve the public interest. Prospective Offerors are further advised that, except for trade secrets and certain personnel information (both of which OTDA has reserved the right to disclose), all parts of proposals must ultimately be disclosed to those members of

the general public making inquiry under the New York State Freedom of Information Law (NYS Public Officers Law, Article 6), although proposal contents ordinarily are not disclosed by OTDA prior to offer award, and approval of the resulting contract by the Office of the State Comptroller.

Should an Offeror wish to request exception from public access to information contained in its proposal, the Offeror must specifically identify the information and explain in detail why public access to the information would be harmful to the Offeror. Use of generic trade secret legends encompassing substantial portions of the proposal or simple assertions of trade secret interest without substantive explanation of the basis therefore will be regarded as non-responsive to this requirement for specificity and explanation. Non-responsive requests for exception from public access will not be considered by OTDA in the event that a Freedom of Information request for proposal information is received.

2. Subsequent to the full execution of the contract resulting from this RFP by the New York State Comptroller's Office and upon request, the name of the successful Offeror along with the amount and complete contents of the associated offer will be disclosed to the extent disclosure is deemed by OTDA to be in the public interest and has not been made previously.

#### J. Office Rights

1. OTDA reserves the right to use any and all ideas presented in any response to this RFP. Selection or rejection of any proposal does not affect this right. OTDA shall also have unlimited rights to disclose or duplicate, for any purpose whatsoever, all information or other work product developed, derived, documented or furnished by the Offeror under any contract resulting from this RFP.

In the event of contract award, all computer programs and other documentation produced as part of the contract will become the exclusive property of OTDA. OTDA reserves a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to do so, such software, modifications and documentation.

2. OTDA reserves the right to:
  - a. Reject any or all proposals received in response to this RFP.
  - b. Reissue a modified version of this RFP.

**(Note:** With regard to all modifications, clarifications, etc. regarding this RFP which OTDA reserves the right to issue, any such modification issued on or before the due date for proposals shall go to all entities which have requested a copy of this RFP; after that date (or an amended date, as the case may be), notification will be only to Offerors who have submitted a proposal. Please note that OTDA's right to issue modifications, etc. permits any addition or deletion of requirements as OTDA may deem appropriate, subject only to the bounds set forth in the notice published in the Contract Reporter dated April 2, 2012.
  - c. Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights.
  - d. Amend any part of this RFP, at any time, upon written notification to Offerors.
  - e. Direct any Offeror to submit proposal modifications addressing subsequent RFP amendments.
  - f. Require that any or each Offeror provide an oral presentation of its proposal.
  - g. Select and award the contract to other than the lowest Offeror.
  - h. Accept all or part of a selected Offeror's proposal.

- i. Make typographical corrections to proposals, with the written concurrence of the Offeror.
- j. Correct computational errors with the written concurrence of the Offeror.
- k. Change any of the scheduled dates, including start dates, stated herein upon notice to the Offerors.
- l. Request Offerors to clarify their proposal and/or submit additional information pertaining to their proposal.
- m. Terminate review of proposals found technically or financially deficient.
- n. Disqualify any Offeror whose conduct or proposal fails to conform to the requirements of this RFP.
- o. Request best and final offers from any Offeror who submits a technically acceptable proposal.
- p. Eliminate any requirements unmet by all Offerors upon notice to all parties submitting proposals or Letters of Intent.
- q. Cancel the procurement, at any time, prior to award of the contract, upon written notification to Offerors.

K. Minimum Qualifications Required of Offerors

Offerors must clearly demonstrate the capacity through past experience to perform the number and types of services specified in this RFP. Past experience may include DDD exams, employment exams, independent medical exams and direct patient care.

Proposals from organizations without experience, integrity and adequate financial resources will be rejected. A qualified Offeror must be a single, fully responsible prime contractor and must identify any intended subcontractors and describe in detail their specified roles in the technical proposal. The functions that may be subcontracted are administrative services, transcription services, laboratory services, radiology interpretation services, and the optional services listed in Appendix C. Utilization of subcontractor(s) must be approved by OTDA. For the purposes of this procurement and the resultant contract, a subcontractor is considered to be any individual or legal entity, as defined in the Glossary of Terms that performs a portion of the prime contractor's obligation under the terms of a written agreement with the prime contractor. Any entity that exclusively provides only goods, supplies and/or materials shall be considered exempt from this definition.

Offerors and their staff must be in full compliance with federal, state and local operating requirements, as appropriate, for providing a facility and services as specified by this RFP. Contractors providing medical consultative examination services must comply with those articles, which regulate the admission to and practice of the professions, including medicine. All such entities must be in compliance with the requirements of Education Law §6527 and in compliance with Article 15 of the New York State Business Corporation Law, or other corporate organization for physicians as authorized by law. All directors and officers of a corporation providing medical examinations (except those entities delineated in §6527) must be physicians. OTDA reserves the right to disqualify from consideration any organization that it believes is not capable of performing the services as specified in this RFP.

L. Prohibition on Use of Federal Funds for Lobbying

Pursuant to Section 1352, Title 31 U.S. Code, no Federal appropriated funds may be expended by the recipient of a Federal grant or a subtier contractor or subgrantee to pay any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

Any person who receives a contract exceeding \$100,000 at any tier under a Federal grant will be required to file a certification that no Federal appropriated funds have been or will be expended in violation of the above prohibition. If any funds other than Federal appropriated funds have been or will be expended by the contractor to pay any person for influencing any Federal officer, employee or member of Congress described above in connection with such Federal grant, the contractor will be required to make a written disclosure on a specified disclosure form.

For further detail, refer to the Federal statute and interim final regulations (45 CFR, Part 93, February 26, 1990).

M. **Minority and Women-Owned Business Enterprise (M/WBE) and Equal Employment Opportunity (EEO) Participation Requirements**

New York State Executive Law §§ 310–318, (Article 15-A: Participation by Minority Group Members and Women with Respect To State Contracts -- hereinafter “the Statute”), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. The New York State Office of Temporary and Disability Assistance (OTDA) fully supports the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons and to promote equality of economic opportunity for minority group members and women who own business enterprises.

OTDA has developed compliance requirements, forms and procedures to ensure that (i) all contractors as defined under § 310 (3) (to include those who submit bids/proposals in an effort to be selected for contract award as well as those successful bidders/proposers with whom OTDA enters into State Contracts, as defined in § 310 (13) [hereinafter “Contractors”], as well as proposed or actual “Subcontractors”, as defined in § 310 (14) shall comply with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, and, (ii) there are meaningful participation opportunities for certified minority or women-owned business enterprises (M/WBEs) in the OTDA procurement process. Contractors participating in and/or selected for procurement opportunities with OTDA shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144). (Please refer to Appendix Z, attached and incorporated by reference herein, for the specific EEO/MWBE requirements and associated forms required by this procurement.) These forms are to be submitted without change to OTDA goals specified in the RFP or contract. Copies of the required OTDA Forms are identified in this Appendix and available on OTDA’s Internet site at <http://otda.ny.gov/contracts/mwbe/forms.asp>.

It is important to note that in addition to direct sub-contracting on State contracts, contractors can also utilize a number of other vendors in support of their overall operations. Using NYS Certified MWBEs (link to Directory of NYS Certified MWBEs, <http://www.esd.ny.gov/MWBE.html>) as providers of these second tier services can be counted in satisfaction of the goals. The following are examples of indirect services that you may want to consider for compliance with MWBE subcontracting participation requirements: Accounting Services, Advertising, Building Maintenance, Car Rental, Cleaning Supplies, Copying, Electrical Services, Furniture, Heating and Cooling, Janitorial Services, Office Supplies, Pest Control, Printing Services, Publishing, Rubbish Removal, Security, Shredding Services, Tax Preparation, Technical Writing, Training, Travel Services, etc.

N. Omnibus Procurement Act

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl Street, 7<sup>th</sup> Floor  
Albany, NY 12245  
Phone: (518) 292-5220 Fax: (518) 292-5884

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

NYS Department of Economic Development  
Minority and Women's Business Development Division  
30 South Pearl Street, 2<sup>nd</sup> Floor  
Albany, NY 12245  
Phone: (518) 292-5250 Fax: (518) 292-5803

Offerors are hereby notified that if their principal place of business is located in a state that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 amendments (Chapter 684, Laws of 1994) require that they be denied placement on Offerors mailing lists and contracts for which they would otherwise obtain. Offerors of construction services must be denied the award of a contract if their principal place of business is located in a state that discriminates or imposes a preference against New York State firms listed jurisdiction.

A current list of states which penalize New York State firms is available from:

Empire State Development  
Procurement Assistance Unit  
30 South Pearl St.  
Albany, NY 12245  
Phone: (518) 292-5220

The Omnibus Procurement Act of 1992 requires that by signing an offer proposal, contractors certify that whenever the total offer amount is greater than \$1,000,000:

1. The contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State;
2. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
3. The contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the **Job Service Division** of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request;
4. The contractor acknowledges notice that New York State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

O. Notice of Award and Debriefing

1. Subsequent to the evaluation of all offers received pursuant to this RFP, all Offerors will be notified of the acceptance or rejection of their proposals. News releases or any other disclosure relating to this contract award shall not be made by the successful Offeror or its agent without the explicit approval of OTDA.
2. OTDA will notify all Offerors, at or about the time of offer award, other than the successful Offerors of the fact that their proposals were not selected. Each unsuccessful Offeror will be given the opportunity to be debriefed by OTDA as to why its proposal was not selected. Debriefings must be requested within one month of the non-award letter.

P. Other Agency Use

Any contract entered into pursuant to an award resulting from this RFP shall contain a provision that grants the option to extend the terms and conditions of such contract to any other State agency in New York State as well as the local social service districts in New York State providing human services such as income maintenance, job training, employment, social services, or health-related services. See number 15 of the Contract Terms located in Section V of this RFP.

## II. STATEMENT OF WORK

### A. Introduction

The Division of Disability Determinations (DDD) of the New York State Office of Temporary and Disability Assistance adjudicates claims for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) Benefits under an agreement with the Social Security Administration. OTDA, which currently has processing centers in Albany, Buffalo, Endicott, and Manhattan has processed claims filed by New York State residents since the program's inception in 1956.

As part of OTDA's adjudicative process, disability analysts obtain medical evidence from claimants' treating sources. When this information is unavailable or insufficient to make a determination, the disability analyst will order a consultative examination (CE). The information from this medical examination and ancillary testing is used to assist OTDA's staff in making a determination of disability under federal guidelines.

Consultative examinations are purchased by OTDA from two basic Consultative Examination (CE) provider groups enrolled in the disability program:

1. CE Panelist - individual physicians, psychologists, speech-language pathologists, group practices, clinics, etc.
2. Key Providers - CE contractors and high volume providers that specialize in performing CE's for OTDA.

CE providers examine the claimant and perform certain ancillary testing on their premises at the request of OTDA. The most frequent types of testing include: X-rays, Resting and Exercise Treadmill EKG's, Pulmonary Function Tests, and laboratory tests. Contract providers must perform the mandatory ancillary testing on site and refer the laboratory work to a laboratory that accepts Medicaid rates. Individual CE panelists may refer the claimant to a secondary source for ancillary testing.

OTDA is requesting offers to perform examinations and testing as identified in Appendix B and C.

Offerors must bid on and be able to provide **ALL SERVICES** identified as "Mandated". Services identified under the "Optional" section can be bid upon at the option of the Offeror. Any optional services bid upon must be provided throughout the life of the contract. Although the "Optional" services are not required, the scope of optional services that can be provided will be one of the factors under which Offerors will be evaluated.

### B. Eligibility

- B.1. All Offerors bidding on this contract must be in full compliance with federal, state and local operating requirements, as appropriate, for providing a facility and services as specified in this RFP at the time the bid is submitted. Compliance must include, but not be limited to, compliance with New York State Education Law Articles 130 and 131. Contractors providing medical consultative examination services must comply with those articles, which regulate the admission to and practice of the professions, including medicine. All such entities must be in compliance with the requirements of Education Law §6527 and in compliance with Article 15 of the New York State Business Corporation Law, or other corporate organization for physicians as authorized by law. Offerors will be screened by the New York State Department of Health to verify compliance status.
- B.2. Any application required for a change in status must be approved by appropriate Federal, State and local regulating agencies at the time the bid is submitted.
- B.3. Offerors currently suspended from providing health care or diagnostic services by any government regulating agency will not be allowed to offer. In addition, Offerors whose license to provide health care services is under investigation, citation, suspension

(including suspension stayed on compliance with compulsory terms) and/or conviction by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity will not be allowed to offer.

- B.4. The Offeror must demonstrate the capacity to perform the number and types of services specified in this RFP through past experience (see Page 8, Section K).
- B.5. The Offeror must have either a written backup agreement with a certified hospital or must indicate use of 911 services for emergency medical services prior to the submission of a proposal.
- B.6. The decision of OTDA will be binding in the event of conflict as to whether an organization is eligible to offer on this RFP.

C. Staffing

- C.1. All physicians, psychologists and speech-language pathologists performing examinations must be licensed and currently registered in New York State.
- C.2. Physicians must be Board Certified or Board Eligible. While Board Certification is not a requirement, OTDA preference is for Board Certified physicians.
- C.3. The consultative examination contractor must assure OTDA that all support staff (nurses, technicians, etc.) that assist in conducting a consultative examination are licensed or certified, when applicable, and have appropriate experience and training in performing specified services.
- C.4. Any contractor, subcontractor, physician, psychologist, speech-language pathologist or other health care provider currently disciplined, sanctioned, censured or suspended by any government regulatory agency will not be allowed to participate in this program.

It is the affirmative obligation of any contractor, subcontractor, physician, psychologist, speech-language pathologist or other health care provider to report to the prime contractor and to OTDA any notification of investigation by a licensing authority. For example, any physician notified by the New York State Department of Health's Office of Professional Misconduct (OPMC) that an investigation has commenced regarding professional competence, conduct and/or related behavior must report that notification to the prime contractor. The CE prime contractor and physician understand that there exists, as a condition of service engagement, an affirmative responsibility by the physician to immediately report the notification of investigation to the contractor. In turn, the CE prime contractor is obligated to report immediately to OTDA any such notice of investigation.

- C.5. All physicians, psychologists, speech-language pathologists or other health care workers must be approved by OTDA before performing any examinations or ancillary testing. They must have the proper training and experience to perform the type of examination or test requested. A psychiatrist and psychologist who can examine children must be provided. Applications for approval must include proof of their Board Certification or Board Eligibility and appropriate New York State license/registration. Contractor must notify OTDA's appropriate processing center of any change in status of all physicians, psychologists and speech-language pathologists associated with this contract that become excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs as set forth in contract term V.4.
- C.6. The Contractor's medical staff must have a good understanding of the Social Security Disability program and the evidentiary role they play. They must be familiar with the Listing of Impairments used in evaluating disability in adults and children under the SSDI and SSI programs.
- C.7. The Contractor must make all medical and non-medical staff available for occasional training and education by OTDA, both at the contractor's site and at OTDA's appropriate

processing center. **All costs associated with training must be included in your cost proposal.**

- C.8. On occasion Contractor's medical staff may be required to testify at the SSA Office of Hearings and Appeals.
- C.9. The Contractor must have administrative/technician staff fluent in Spanish to assist claimants. This includes reception, history taking, appointment scheduling, and ancillary testing as appropriate. The Contractor must provide a Spanish-speaking psychiatrist and/or psychologist. In addition, other multilingual physicians, psychologists, and speech-language pathologists, particularly those fluent in Spanish, will be beneficial. Although other multilingual consultants are not required, the scope of other multilingual consultants that can be provided will be one of the factors under which Offerors will be evaluated.
- C.10. The Contractor must have a contract liaison assigned to coordinate activities and be responsible to resolve day-to-day problems and questions from OTDA.

D. Examinations

- D.1. All consultative examinations must be performed by licensed and currently registered physicians, psychologists and speech-language pathologists. Consultative examinations may NOT be conducted if he or she, or a member of the family is associated with the NY Disability Determination Service (NYDDS) in a working arrangement. If related to the claimant, the provider must not accept the case.
- D.2. All consultative examinations and ancillary testing must be performed in accordance with sound medical practice with the Contractor assuming full responsibility.
- D.3. The Contractor must provide the following mandatory specialty examinations at their proposed primary site: Internal Medicine, Orthopedic, Neurological, Psychiatric, Psychological, Drug/Alcohol, Pediatric, and Speech-Language. Ophthalmology exams are mandated for the Poughkeepsie/Newburgh location. Licensed psychologists can perform psychiatric examinations, provided the requirement is met as outlined in C.9 above. See Appendix R.
- D.4. Case consult services also are included as mandated services for the following specialties: internal medicine, psychiatry, pediatrics, psychology, and speech-language. These specialist services will be used to assist OTDA in disability case review and adjudication activities (based upon an hourly rate). Case review time may vary significantly depending on the type of case and degree of complexity or upon a specific aspect of case review being requested by OTDA.

This service would be required if OTDA's regional offices require "medical consultant" assistance due to staff shortages or rapidly increasing disability caseloads. Contractor physicians, psychologists, and speech-language pathologists may be required to review and sign disability decisions. This would be a paper, case file review, not a claimant examination. It is anticipated that this service would be used infrequently, and only until OTDA could hire permanent "medical consultant" staff to accommodate the workload. Reimbursement would be based upon the number of hours worked at OTDA, and travel time would not be included.

- D.5. The optional examinations include:

- Syracuse: Ophthalmology and Otolaryngology
- Binghamton: Ophthalmology and Otolaryngology
- Poughkeepsie/Newburgh: Otolaryngology

- D.6. The medical examination, including history, but excluding testing time (blood drawing, x-rays, etc.) must be no less than 20 minutes duration. The psychiatric examination must be no less than 30 minutes duration. The psychological testing must be no less than 45

minutes duration. The speech-language evaluation must be no less than one hour duration. These minimum times must be the actual time spent with a physician, a psychologist or a speech-language pathologist. Appointments must be scheduled to accommodate the above duration requirements and to minimize waiting time.

- D.7. The Contractor shall not recommend treatment or a change in treatment directly to the claimant, but should include such suggestions in the report. However, in circumstances where the evidence shows a medical condition that is legally reportable or which could be injurious to the health or safety of the individual or others, or where the individual has made a threat against himself/herself or others, or has made statements concerning a non-medical serious reportable event (SRE) covered by statute or law, the Contractor should take action consistent with sound and accepted medical practice including notification to the claimant, claimant's representative/family, or claimant's treating source as appropriate and/or permitted by applicable laws. Any emergency treatment and/or information provided should be specified in the report and reported immediately to OTDA. OTDA is not liable for payment of expenses associated with emergency medical treatment.
- D.8. During the course of the examination, the claimant's privacy must be maintained. All claimants can request to have someone present during their physical examination. However, female claimants must be given the option of having a female staff person present during their physical examinations. Female claimants must sign a form acknowledging that they were provided this option.
- D.9. Claimants and beneficiaries are to be given equal and courteous treatment.
- D.10. Appendices B and C include estimates of the volume of exams and tests to be performed by the Contractor. The actual number of referrals are slightly higher; the effect of "no shows" (see page 18, G.10. of this RFP) and, occasionally, CE orders cancelled by OTDA before exams are held, reduce the actual volumes of exams/tests performed. It is emphasized that those numbers are strictly estimates based on past experience but actual future CE orders may differ (increase or decrease).
- D.11. As referenced in D.10. these volumes fluctuate not only on an annual basis due to overall disability workload and budgeting factors, but also on a daily/weekly basis due to varying volumes of case receipts and case types. As a result, the Contractor must have the capacity to accommodate these workload fluctuations at a minimum of 50% and still maintain contract performance standards.
- D.12. The Contractor shall be required to repeat examinations and tests, without charge, which OTDA determines to be incomplete, conflicting, or in error.
- D.13. Claimants or other third party insurers, including governmental sources, shall not be charged for any services rendered.
- D.14. If additional examinations or ancillary testing other than those ordered by OTDA become necessary during the course of the examination, approval for such testing must be obtained from OTDA. This approval should be obtained while the claimant is still at the examining site.

#### E. Ancillary Testing

- E.1. All ancillary testing must be authorized by OTDA. The Contractor must perform the following mandated ancillary testing (specified in Appendix B) at the primary site on the same day as the exam:
- X-rays
  - EKG including Treadmill EKG
  - Doppler Testing including Exercise Doppler
  - Pulmonary Function Testing

Contractor shall draw blood/specimens when needed as part of the examination process. Contractor must have arrangements with a laboratory that will accept Medicaid rates to process all blood specimens.

- E.2. Optional ancillary testing may include those tests identified in Appendix C. Although the "Optional" services are not required, the scope of optional services that can be provided will be one of the factors under which Offerors will be evaluated.
- E.3. Ancillary testing must be performed according to sound medical practice by appropriate medical staff.
- E.4. Based on the background information received with the referral, history secured, and the medical examination, the Contractor will complete only those tests on OTDA's Order and Voucher that are not medically contraindicated. Contractor shall include reasons in the CE report why tests ordered by OTDA are medically contraindicated and/or are not performed.
- E.5. All equipment used in ancillary testing must be capable of providing required results as specified in our reporting guidelines.
- E.6. All equipment must meet all health, safety, and infection control requirements, be maintained in good working order and continue to meet these requirements.
- E.7. All equipment calibration and cleaning/sterilization must be done according to manufacturer's guidelines and OTDA requirements.

F. Reporting Requirements

- F.1. The history and physical/mental examination report must be provided on Contractor's letterhead as a typed narrative of the findings, and not in the form of responses to a questionnaire or a check off list. The narrative report must include all requested test results and interpretations in accordance with SSA program standards.
- F.2. The reported results of the history, physical/mental examination, ancillary test(s), pertinent requested laboratory findings, diagnosis and prognosis must conform to accepted professional standards and practices in the medical field for a complete and competent examination.
- F.3. No examination or test should be initiated or conducted on claimants who are under the influence of alcohol or drugs, if such conditions could affect the validity or reliability of the examination/test in the professional judgment of the consultative examination examiner. A statement of validity and reliability must be included in the report.
- F.4. In addition to the actual medical facts, the report must include a statement which describes the individual's ability to do work related activities based on the findings of the examination. For individuals less than 18 years of age, there should be a statement describing the individual's ability to perform age appropriate activities and behave in an age appropriate manner. Opinions such as "claimant is unable to work" or "claimant is disabled" must not be included in the report.
- F.5. The Contractor must address all items on any of the consultative examination reporting requirement forms provided by OTDA for specific examinations. These forms are attached as Appendix Q. Original tracings, x-ray interpretations, laboratory findings, charts and graphs must be attached to the narrative report. Include with the report copies of any medical reports or test results brought by the claimant.
- F.6. The reporting requirements for the Drug/Alcohol exam also appear in Appendix Q. The internist performing the Drug/Alcohol exam must determine whether the claimant should be referred for a psychiatric exam. If the claimant requires a psychiatric exam, the exam should take place that day as soon as possible after the physical exam. Historically, approximately 50% of the claimants have been referred on for the psychiatric exam.

- F.7. Claimant name, Order & Voucher (O&V) number, Module/Unit, Personal Identification Number (PIN), and date of report must appear on the first page of the report typed on original letterhead. All subsequent pages, tracings and any other material must have claimant name, O&V number, and Module/Unit/Personal Identification Number. The claimant's Social Security Number (SSN) should not appear on any of the documents mentioned above.
- F.8. All reports must be personally reviewed and signed by the consultant who actually performed the examination. A rubber stamp signature or a signature entered by another physician, nurse, or any other person is not acceptable. The consultant's name and specialty must be typed at the end of the report.
- F.9. The Contractor's physicians, psychologists, etc., performing the examinations must be made available during OTDA's normal working hours for telephone discussions to clarify or to answer any questions regarding the report. Responses must be received within 48 hours from OTDA's request. A copy of all examination and testing reports, including tracings, lab results and x-ray films, must be kept by the Contractor for a minimum period of one year and supplied to OTDA upon request at no charge. Thereafter, these reports are maintained by SSA for a minimum of six years.
- F.10. Complete confidentiality of claimant information must be maintained. Examination/test results must not be divulged to anyone including the claimant, their representative, or treating source or used in any study or publication without the express written approval of OTDA, except as specified in D.7. If the claimant requests a copy of the examination/test report sent to his or her treating source, the claimant may sign an "Authorization to Release" CE-9 form (previously mailed or given to the claimant) and return it to OTDA. It is the responsibility of OTDA to release reports, where appropriate and consistent with applicable law. Third party service providers (transcription, messenger, etc.) must be made aware that claimant confidentiality must be maintained and that disclosure of claimant information is prohibited.
- F.11. Should the Contractor receive a request for disclosure or release of a report or a subpoena, the Contractor should immediately call the medical relations officer in the appropriate processing center for further instructions.
- F.12. One hundred percent (100%) report quality must be maintained; i.e., all items in this Reporting Requirements section must be strictly adhered to on all reports. Reports must be redone without charge if OTDA determines that they are incomplete, conflicting and/or in error.
- F.13. The Contractor must return completed CE reports electronically to OTDA. (See Appendix U)

The Contractor must have a back-up plan in the event of system failure. A back-up plan must include but is not limited to (a) signature guidelines in F.8. must be followed, and (b) reports must be delivered daily to the appropriate processing center.

#### G. Appointment Process

- G.1. All appointments shall be scheduled by the Contractor so that adequate time is spent by the specialist to provide a complete examination according to standard medical practices. Appointments must be scheduled to minimize waiting time for claimants.
- G.2. A weekly schedule showing hours of operation, physician name, specialty, hours present, and number of claimants scheduled during this time must be prior approved by OTDA.
- G.3. Appointments shall be scheduled by telephone, where one is available, so the appointment is no longer than 7 days from the time the order is received. In all cases an appointment letter must immediately be sent to the claimant, and also a reminder call must be made

within 2 days of the appointment date. If a claimant cannot be reached by telephone or the claimant does not have a telephone, an appointment letter will be mailed. This time frame may be extended at the request of OTDA or the claimant if there is a travel or other valid reason for the claimant's inability to attend the exam. Appointments must be scheduled between the hours of 9 a.m. to 5 p.m., Monday through Friday, and may be scheduled on weekends with Office approval. No appointments can be scheduled for evening hours unless prior approved by OTDA.

- G.4 Optional eye service: In claims involving a finding or allegation of a visual impairment, beneficiaries, claimants, recipients, and representative payees will be able to receive SSA notices and correspondence, including DDS notices and correspondence that may impact either current benefits or the rights to future benefits. When a claim meets the requisite profile, at OTDA's discretion the Contractor may be responsible for sending appointment notices on that claim by certified mail and may also be responsible for placing a follow-up telephone call, within 5 business days of sending a notice, for the purpose of making contact with the claimant and reading the notice to the claimant. Additionally, the Contractor may be required to forward a copy of the notice to a 3<sup>rd</sup> party vendor so that the 3<sup>rd</sup> party vendor can make provision to take care of additional levels of notification.
- G.5 The contractor shall assist when necessary in making appropriate travel arrangements to and from the facility.
- G.6 The Contractor must develop and implement the technical infrastructure necessary to electronically accept, on a daily basis from OTDA's processing centers', orders for consultative examinations. Further, the Contractor must provide an electronic receipt notice of each order sent back to the originating requestor. Personalized claimant letters, with the appointment dates, and pamphlets shall be sent to the claimants and authorized representatives, by the Contractor, in a format designated by OTDA. The Contractor shall retain a copy for their records. The letter shall be sent to the claimant in all instances. Contractor must electronically notify OTDA of the appointment date, whether the appointment was kept, etc., by completing and transmitting the CE Appointment History Form, DDD-4184 (CE-10) within 1 business day after each action. Contractor may also be required to generate an Office designated letter notifying the claimant that failure to keep their appointment may affect the decision on their case. See Appendix T for letter samples and Appendix S for "Instructions for Completion and Transmission of the Consultative Examination (CE) Appointment History Form, DDD-4184 (CE-10).
- G.7. The Contractor must verify the claimant's identity; e.g. driver's license, State ID or any other method for verifying an individual's identity deemed acceptable by law or regulation. See V.42. Contract Terms.
- G.8. Ancillary testing must be scheduled to be performed on the same day as the examination and at the same site, except where otherwise specifically approved by OTDA. In situations where two different specialist exams are ordered, the Contractor must attempt to schedule the exams on the same day.
- G.9. Any necessary instructions or notices sent to the claimant in advance of the examination must be provided by the Contractor, subject to approval by OTDA.
- G.10. If the claimant fails to appear for an examination, the Contractor must schedule a second appointment unless otherwise instructed by OTDA. Although additional appointments must be made if requested by OTDA, the updated appointment information must be immediately reported electronically to OTDA after the second appointment is missed. There will be no payment for missed or cancelled appointments, lateness for appointment or discontinued examinations. Historically, "no show" rates are highest for psychiatric and drug addiction/alcohol referrals. Average "no show" rates for all specialties are generally in the range of 20-25% (missed first and second appointments).
- G.11. Contractor must be able to receive an electronic request for a 3<sup>rd</sup> appointment.
- G.12. Contractor must be prepared to receive an electronic request that includes third party

contact information. Upon receipt, contractor must contact 3rd party by phone and/or by mail to request assistance in helping claimant manage the CE process.

- G.13. Contractor must be able to upload TIFF images throughout the life of a CE order documenting significant order events as required by OTDA, including claimant contacts, third party contacts and reminder notices.
- G.14. Any exam scheduled more than 10 days into the future will require that a reminder notice be sent 10 days prior to the scheduled exam or on the next business day if the reminder date falls on a non-business date.
- G.15. All timeframes for scheduling, phone contacts, third party contacts, reminder notifications and written examination notifications are subject to change by OTDA.
- G.16. At OTDA's discretion, the contractor may be required to send the claimant an additional call-in letter to discuss exam details with the claimant.
- G.17. Processing time from the date an order is received electronically by the Contractor to the delivery of the report to OTDA must not exceed 20 days, unless OTDA requests that a third appointment be made. Reports must be received by OTDA no later than 5 days after the examination.
- G.18. The Contractor may be required to accept telephone orders for scheduling on a same day appointment basis where physician availability allows it.

#### H. Facility Requirements

- H.1. Offeror must propose a primary site that is located in one or more of the following metropolitan areas. The primary site must be centrally located to all major highways and be within reasonable walking distance of public transportation. Offerors may also include satellite office locations in addition to the primary site. Such satellites are not a requirement, but, if proposed, will be one of the factors under which the Offeror will be evaluated. Accessibility is a key consideration in the technical evaluation process.

Syracuse – Includes Syracuse and surrounding metropolitan area.

Binghamton – Includes Binghamton, Johnson City, Chenango Bridge, Endicott or Vestal.

Poughkeepsie/Newburgh – Includes Poughkeepsie, Wappinger Falls, Fishkill, Beacon or Newburgh areas.

- H.2. The facility must have sufficient natural or mechanical ventilation and be maintained at a comfortable temperature range.
- H.3. There must be sufficient lighting at the building entrance and in parking areas, if provided, and in all areas within the building where people, equipment or files are located. Although a parking area is not a requirement it will be one of the factors under which Offerors will be evaluated.
- H.4. There must be at least two suitable exits which are marked with prominent signs that are visible at all times.
- H.5. Passageways, corridors, doorways and other means of exits must be clear and unobstructed.
- H.6. Exit doors and doors in exit passageways must swing in the direction of exit travel.
- H.7. Cubicle curtains and draperies must be flame retardant.
- H.8. Smoking regulations must be prominently posted and enforced.

- H.9. Electrical outlets must not be overloaded.
- H.10. Facility must be in compliance with all State, County and City or local fire and building codes at all times.
- H.11. Facility must have a reception and information desk, telefax equipment and administrative area for staff meetings.
- H.12. Waiting room must be of sufficient size so there is adequate seating for claimants. Minimum waiting room requirements by location are as follows:
- Syracuse – 35 seats
  - Binghamton – 25 seats
  - Poughkeepsie/Newburgh – 40 seats
- The facility shall have accessible drinking water, toilet facilities and telephone availability for claimants.
- H.13. Facility must be accessible to disabled claimants including:
- primary entrance to building usable by claimants in a wheelchair
  - toilet usable by disabled claimants
  - doors used by disabled claimants at least 32" wide
  - elevators if more than first floor used by disabled claimants
- H.14. If dressing rooms are used, separate rooms with doors must be provided to assure privacy of claimants.
- H.15. Examining rooms must have doors to assure privacy and be not less than 80 square feet.
- H.16. There minimum number of examining rooms by locations is as follows:
- Syracuse – 6 rooms
  - Binghamton – 4 rooms
  - Poughkeepsie/Newburgh – 5 rooms
- H.17. The facility must have the capacity to accommodate a minimum workload increase of 50%.
- H.18. Electric wiring and extension cords to appliances must be in good condition with no frayed wiring, worn insulation or splices.
- H.19. The facility must have a written procedure for staff action in the event of a medical emergency, fire or disaster.
- H.20. Premises must be kept clean and in good repair.
- H.21. A sufficient linen supply must be maintained.
- H.22. Hand washing facilities must be present in all examination rooms, except those examination rooms designated for psychiatric, psychological and speech-language evaluations.
- H.23. Written policy and procedures must be established and followed to provide a sanitary environment and ensure proper techniques for infection control.
- H.24. Security of claimants' clothing and personal property must be provided during the examination.
- H.25. Locked storage must be provided for drugs and biologicals.
- H.26. All necessary licenses and inspection certificates to do business as a medical facility must

be secured, posted, and kept current including certificate of occupancy, health and fire, and radiology.

- H.27. Lease commitments must specify the term of the lease and the term of any lease extensions. Uninterrupted facility/lease access hours must be, at a minimum, Monday-Friday, 9 am - 6 pm. The lease must also indicate weekend access.
- H.28. Contractor must maintain a minimum of two telephone lines in their administrative office with toll-free service for callers throughout New York State.

### III. OFFERORS RESPONSE

The Offeror is required to submit the technical proposal SEPARATELY from the financial proposal. The technical proposal and financial proposal must be signed by an officer authorized to bind the Offeror to its provisions.

- A. Technical Proposal – **Six** copies of the technical proposal (**two proposals marked “Original” containing original 4095 Consultant Enrollment forms and 4 copies**) must be submitted according to the following outline and include each of the items specified.

A letter of transmittal (including email address and fax number) addressed to Ms. Cynthia A. Hopko (see address page 6) **MUST** accompany your technical proposal and must be signed by an official of the firm authorized to bind the firm to the requirements of this RFP. Your letter of transmittal must include a statement to this effect. In addition, your letter of transmittal **MUST** certify the following:

- a. that all information and forms contained within your technical proposal are true and accurate;
- b. that all 4095 Consultant Enrollment forms were completed by each physician proposed to perform the work specified in this RFP in accordance with Section III.A.4. of the RFP, and that no changes or modifications to the completed 4095 forms have been made by any other individual;
- c. that the Offeror has not acted in collusion with any other prospective Offeror or competitor in preparing its proposal or responding to this RFP;
- d. that the Offeror has not disclosed its pricing which is included in the financial proposal (Appendix B) submitted in response to this RFP;
- e. that the Offeror has not acted to restrict competition in responding to this RFP;
- f. specify any planned subcontractors;
- g. that the Offeror is willing and able to undertake the performance of all services required by this RFP;
- h. disclose any potential conflict of interest involving the Offeror or any planned major subcontractors. If there are none it shall be so stated;
- i. contain a statement authorizing OTDA to submit any and all names of medical staff submitted in the Offerors proposal to licensing authorities

The letter of transmittal shall constitute an acknowledgment by the Offeror that all information supplied to or obtained by the Offeror or its agent(s) pertaining to a Social Security claimant is confidential in nature and may not be used for any purpose other than the formulation of a good faith offer based on this RFP. Any other uses of or release to any party or parties of this information without the prior written consent of OTDA shall constitute a breach of confidentiality and may result in disqualification of the Offeror or other sanctions as determined by OTDA.

*THE TECHNICAL PROPOSAL MUST FOLLOW THE FORMAT IDENTIFIED BELOW:*

*ALL OF THE FOLLOWING INFORMATION IS MANDATORY.*

1. **Management Summary** - This section will include a general background and organization of the company, a summary of services to be provided, and the content of the technical proposal. Specific requirements include:
  - Corporate or Business Name
  - Administrative Address
  - Facility Name
  - Facility Address
  - Federal Tax I.D.
  - Names, addresses, titles and other business or professional affiliations of all persons having an interest in the facility or affiliated companies (officers, partners, shareholders) and the percentage of that interest. (The form in Appendix P should be used for this information).
  - All Offerors are required to disclose any work the offering entity (including affiliates and subsidiaries) has had in the last five years from the date of this proposal or any work the

offering entity (including affiliates and subsidiaries) have presently applied to have with other governmental agencies and private organizations (both profit and not-for-profit). (The form in Appendix K should be used for this information).

- Submit copies of all applicable licenses and certifications, i.e., Article 28, certificates of incorporation, applications for change of status, pending applications for any such licenses, etc.
  - Table of Organization identifying all key organizational components AND key managers by name.
  - Emergency back-up agreements with certified hospital or indicate use of 911 services
  - Subcontractor agreements related to the performance of work required by this RFP.
  - Description of any impending, current or recent litigation, administrative proceedings before any federal or state regulatory agency or sanctions your firm has been involved in which might have an impact on this contract.
  - Description of affiliations with other organizations that provide required services.
2. **Examination Facility** - This section will describe the primary examination facility being offered and how the facility requirements will be met as specified in this RFP. Specific requirements include:
- Address and location of facility in relation to public transportation and full description of how claimants will get to facility using all modes of transportation.
  - Floor plans identifying:
    - total facility square footage
    - specific exam rooms
    - specific room dimensions
    - proposed use for each room and equipment locations
    - excess space capacity
  - Copies of lease commitments specifying:
    - commitment for duration of the contract period
    - number of extensions and the term of the extensions
    - access hours, (must be uninterrupted)
    - weekend hours
  - Complete description of how proposed site meets each facility requirement specified on pages 19 and 20.
  - If the Offeror is proposing a facility which requires significant site renovations, a comprehensive renovation schedule must be included which documents the Offerors' ability to conclude required work by contract start-up.
3. **Ancillary Equipment** - This section will specify the equipment being proposed for the completion of ancillary testing. For each functional test specified in Appendix B and C, Contractor must list manufacturer, model, age of equipment, calibration/service requirements, and maintenance and infection control/sterilization procedures. (The form in Appendix J should be used for this information.)

**Ancillary Testing** - The Offeror must have arrangements with a laboratory accepting Medicaid rates to process all blood specimens. Attach to Appendix J, a letter of commitment identifying the laboratory you will use, stating whether the laboratory has agreed to accept Medicaid rates.

4. **Staffing** - This section will describe the medical and administrative staff proposed to perform the work specified in this RFP. Specific information must include:
- Identification of Chief Medical Officer.
  - List of all medical and non-medical staff to include name, title, specialty, function, languages spoken, hours worked on services for the contract, and status of employment (currently employed by Contractor, pending recruitment, etc.). (The form in Appendix I should be used for this information.)
  - Copy of current registration, Board Certification or proof of Board Eligibility, for each medical staff person.

- Completion of a 4095 Consultant Enrollment Form for all medical staff (Page 1 only). This form must be completed as an original by the physician only, and must be completed and signed by the physician in blue ink. All forms must be completed, signed and dated by the physician within three (3) months of the proposal due date. In addition, the 4095 must be notarized to verify the physician's signature. Completion of a 4095 Consultant Enrollment Form for all medical staff of the successful Offeror is again required within two months of contract start-up, if there has been more than a 60 day lapse in service, or when there are changes in medical staff, including location where services are provided. The Offeror must not make any changes, additions, or deletions to a medical provider's 4095 form. (See Appendix W for the 4095 form and the Conditions Governing Referrals for Consultative Examinations.)
  - OTDA acknowledges that volumes increase and decrease and may in fact differ at contract start-up from the volumes represented in this RFP. However, Offerors must certify that the staff and hours committed on Appendix I will be provided at contract start-up if the volumes remain the same as reflected in this RFP.
5. **Services Performed** - This section must describe how your firm plans to meet the service requirements specified in this RFP. Specific requirements include:
- Plan for receipt of electronic CE orders;
  - Plan for electronic delivery of completed CE reports to OTDA;
  - Backup plan for delivery of CE reports in the event of system failure;
  - Appointment scheduling process;
  - Proposed appointment schedule, days/hours of operation. The form in Appendix O should be used for this information;
  - Claimant reception, history taking process;
  - MD report dictation, transcription, and report signing processes;
  - Plan for MD's to receive clarification calls from OTDA staff;
  - Detailed plan of how processing time standards will be met;
  - Quality assurance plan for CE reports;
  - Where records will be stored;
  - How additional MD staff will be recruited if needed;
  - Back-up plan for coverage during MD vacation periods;
  - Plan for handling increases of a minimum of 50% in referral volumes - staffing and facility;
  - Plan for your firm to be 100% operational at the time of contract start-up;
  - Optional Services – Appendix N must be completed and submitted with your technical proposal whether you intend to offer optional services or not. If offering optional services identify optional exams and tests to be performed, and whether the optional exams or tests will be performed onsite (do not include cost data here). Attach to Appendix N a letter of commitment from the facility that will be performing optional services offsite. If not offering optional services, checkmark the box "Will not provide any optional services".
6. **Sample Reports and Tests** - The Offeror is required to submit a sample of a complete report for each of the following specialties and tests, in the prescribed format, to determine their understanding of the report requirements specified in this RFP. ***All social security numbers and personal information should be redacted. Fake names and SSN's should NOT be used.***

**CLEARLY LABEL EACH REPORT BY SPECIALTY AND TEST.**

- Internal Medicine
- Orthopedic
- Psychiatric
- Neurological
- Psychological
- Pediatric
- Drug/Alcohol
- Speech and Language
- Resting EKG Tracings
- Treadmill Exercise Test EKG Tracings
- Spirometric Tracings Before and After Bronchodilators

**If offering on optional examination(s), submit a sample of completed report(s) in the prescribed format.**

7. **Qualifications** - include the following:
    - Statement of qualifications of your firm to provide required services. A complete description of similar consultative examination services provided to other companies must be included (specificity is required).
    - Name and background of proposed contract liaison staff.
    - Three references for which your firm is currently offering similar services. Include firm name, name of person to contact and telephone number of each reference. References must document the number and types of services performed. Any business either currently being performed or previously performed with any governmental source also must be specified.
    - Identify any major service changes your firm is pursuing (site relocation, expansion/contraction, impending contracts, etc.).
  8. **Agency/Department References** – Each Offeror must complete the New York State Agency/Department References Form, Appendix M and submit it as part of your technical proposal. If it does not apply to your organization, type "Not Applicable" on Appendix M and submit it as part of your technical proposal.
  9. **Contract Provisions** – Each Offeror must include a positive statement with respect to your firm's willingness to sign and fulfill a contract containing the terms and conditions specified in this RFP. Also include a positive statement assuring that the offer will remain open and not subject to change for a minimum of 180 days.
  10. **Contractor/Subcontractor Background Questionnaire** – Each Offeror must complete the NYSOTDA Contractor/Subcontractor Background Questionnaire, Appendix L, and submit it as part of your technical proposal. Appendix L must also be completed by any proposed subcontractors.
  11. **Physician Background Questionnaire** – Each Offeror must complete the NYSOTDA Physician Background Questionnaire, Appendix L, for any physician who is an independent contractor and submit it as part of your technical proposal.
- B. Financial Proposal - **Six** copies of the financial proposal must be submitted according to the following outline and completed on the forms outlined below. A letter of transmittal addressed to Ms. Cynthia A. Hopko (see address page 6) must be signed by an official of the firm authorized to bind the firm to the requirements of this RFP. In addition, your letter of transmittal must also include a statement to the effect that all information and forms contained in the financial proposal are true and accurate.
1. **Mandatory Services** - Each Offeror must include a unit price for each procedure for each of the time periods as specified in Appendix B. The Offeror must be able to offer each of these services.
  2. **Optional Services** - Each Offeror who is capable of performing the optional services listed in Appendix C should include a unit price for each procedure they wish to offer. The unit price must be specified for each of the time periods.

*NOTE: BOTH THE MANDATORY AND OPTIONAL SERVICES MUST NOT EXCEED DDD'S FEE SCHEDULE FOR THE THREE (3) YEAR TERM OF THE CONTRACT. DDD'S FEE SCHEDULE IS INCLUDED IN APPENDIX V.*

3. **Support Documentation** - Each Offeror must submit additional cost data to support their offer. The supporting cost data must be completed in Appendix D and include cost data for Personnel, Rental of Facility, Equipment, Profit, and other overhead.
4. **Minority and Women-Owned Business Enterprises (M/WBE) and Equal Employment Opportunity (EEO) Participation Requirements** – Each Offeror must complete Appendix Z forms and include them with the financial proposal material to Ms. Cynthia A. Hopko (see address page 6).
5. **MacBride Fair Employment Principles** - Each Offeror must complete the "Nondiscrimination in Employment in Northern Ireland: MacBride Fair Employment Principles" form (Appendix E) and submit it with the financial proposal material to Ms. Cynthia A. Hopko (see address page 6).
6. **Non-Collusive Bidding Form** - Each Offeror must complete the "Non-Collusive Bidding Certification" form (Appendix F) and submit it with the financial proposal material to Ms. Cynthia A. Hopko (see address page 6).
7. **Procurement Lobbying Act** – Each Offeror must complete the “Procurement Lobbying Act Form” and the “Disclosure of Prior Non-Responsibility Determinations Form” (Appendix G) and submit it with the financial proposal material to Ms. Cynthia A. Hopko (see address page 6). Refer to web page <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html> for clarification of the Procurement Lobbying Law.
8. **Contractor Certification to Covered Agency** – Each Offeror must complete the “NYS Department of Taxation & Finance Certification Form” **ST-220-CA** (Appendix H) and submit it with the financial proposal material to Ms. Cynthia A. Hopko (see address page 6).
9. **Annual Report** - Each Offeror must provide a copy of its firm's most recent annual report and a recent copy of a financial statement prepared by an outside organization. *In addition, each Offeror must demonstrate that it has sufficient working capital to front-end the funding needed to support projected contract expenses for a minimum of 3 months.* Documentation to this effect must be submitted.

## IV. EVALUATION PROCESS

The following groups will be involved in the evaluation process:

1. A Technical Evaluation Committee will be established to evaluate technical proposals and prepare a report and recommendations.
2. A Financial Evaluation Committee will evaluate financial proposals and prepare a report and recommendations.
3. A Selection Committee will be established to review the recommendations of the Technical Evaluation Committee and the Financial Evaluation Committee, and will make a final recommendation to the Commissioner of the Office of Temporary and Disability Assistance.

### PROPOSAL WEIGHTING

The technical evaluation will constitute 70% of the overall score, while the financial evaluation will represent 30% of the overall score. Scores from the Technical and Financial Committees will be added together by the Selection Committee to produce a combined final score for each proposal. A recommendation will be made to award to the Offeror whose combined score is the highest.

### TECHNICAL PROPOSAL

#### Initial Screen

All technical proposals received will first be screened by the Technical Evaluation Committee to determine if they are sufficiently responsive to this RFP and assure that all requirements of this RFP have been properly addressed by the proposal. The proposal must meet the minimum mandatory requirements in Section II and Section III to permit a detailed evaluation. Any proposal which fails to satisfy minimum mandatory requirements will be rejected, and receive no further consideration.

All Offerors whose proposals are found not to be responsive will be notified that their proposal will not be considered in the detailed evaluation. Minor issues and questions may be resolved by contacting the Offeror for clarification. However, in no event will a substantive change be permitted in either the financial proposal or the technical proposal. OTDA reserves the right to waive minor technical deficiencies subject to notification to the Offeror.

#### Detailed Evaluation

The second phase of the technical evaluation process will consist of a detailed review to determine the relative strengths and weaknesses of each technical proposal that passed initial screening. In particular OTDA will assess each Offeror's ability to perform the required services and meet the required contract terms.

The technical evaluation will assign a weight to the following four categories: Examination Site, Service Plan, Medical Staffing, and Experience. A maximum of 100 points is available for the Technical Proposal (see Appendix X).

## Technical Scoring

Each evaluator will assign points to each criterion within a category. These points are assigned in a range of 0 to 10. The points are defined as follows:

| Points    | Description        | Discussion  |
|-----------|--------------------|---|
| 0 - 1.9   | Less Than Marginal | The Offeror has omitted any discussion of this requirement or the information provided is of no value.  |
| 2 - 6.9   | Marginal           | The Offeror has not fully established the capability to perform the requirement, has marginally described its approach, or has simply restated the requirement.       |
| 7 - 8.4   | Average            | The Offeror has a moderate capability to meet this category and has described its approach in sufficient detail to be evaluated.                                      |
| 8.5 - 9.5 | Above-Average      | The Offeror has demonstrated an above-average capability or approach and has provided a complete description of the capability or approach.                           |
| 9.6 - 10  | Superior           | The Offeror has provided an innovative, detailed efficient approach or established, by references and presentation of material, far superior capability in this area. |

When scoring is completed, each evaluator's scores will be totaled for each proposal. Then, each evaluator's score for a proposal will be averaged together for a total technical score for an Offeror. **THE TOTAL TECHNICAL SCORE FOR A PROPOSAL MUST BE A MINIMUM WEIGHT OF 65% TO RECEIVE FURTHER CONSIDERATION.**

The Technical Proposals will first be ranked by total technical score. Then the scores will be normalized by awarding the highest-ranking proposal with the maximum Technical Proposal score of 100. The remaining proposals with a total technical score of 65 and above will receive a proportional score by using the following formula:

$$y = (n/x) * 100, \text{ where}$$

y = Final technical score  
n = Technical score for Offeror  
x = Highest technical score of all qualified Offerors

After the scores are normalized, they will be further adjusted by a factor of 70% to represent the overall technical evaluation weighting.

For example, if Firm A's total technical score is 90 and is the highest technical score of all qualified Offerors, Firm B's score is 85 and Firm C's score is 80, these scores will be normalized as follows to obtain the final technical score. The final technical scores will be further adjusted by a factor of 70% to represent the overall technical evaluation weighting.

Firm A  $Y = 90/90 * 100$   
 $Y = 1 * 100$   
 $Y = 100$  Final Technical Score

Firm B  $Y = 85/90 * 100$   
 $Y = 0.9444444444 * 100$   
 $Y = 94.44$  Final Technical Score

Firm C  $Y = 80/90 * 100$   
 $Y = 0.888888888 * 100$   
 $Y = 88.89$  Final Technical Score

| <u>FIRM</u> | <u>FINAL TECHNICAL SCORE</u> | <u>ADJUSTED BY 70%</u> |
|-------------|------------------------------|------------------------|
| A           | 100.00                       | 70.00%                 |
| B           | 94.44                        | 66.11%                 |
| C           | 88.89                        | 62.22%                 |

A visit to the Offeror's facilities may be required. Recommendations will be developed and forwarded to the Selection Committee.

### FINANCIAL PROPOSAL

Financial proposals will be reviewed by the Financial Evaluation Committee to determine the Offeror's ability to implement the services and to financially support the requirements of this RFP. The Offeror's financial solvency, strength and stability will be evaluated to ensure that the Offeror can be relied upon to perform the terms and requirements of the contract resulting from this RFP without financial difficulties that could impede contractual performance. Responsive financial proposals will be compared to determine cost differentials and low to high ranking.

All qualified Offerors will be ranked from lowest to highest bidder based on the totals quoted for mandatory services for the first three years of the contract. The lowest bidder will be assigned 30 points the maximum allowable. Other bidders will be scored by using the low bid divided by the bid being evaluated and multiplying by the maximum number of points for cost (30). For example, if Firm A's offer totals \$1,000,000 for the 3 year total, Firm B totals \$1,100,000 and Firm C totals \$1,200,000, the scores will be as follows:

| <u>FIRM</u> | <u>3 YEAR OFFER</u> | <u>SCORE</u> |
|-------------|---------------------|--------------|
| A           | \$ 1,000,000        | 30           |
| B           | \$ 1,100,000        | 27.27        |
| C           | \$ 1,200,000        | 25           |

As a result of its analysis, the Financial Evaluation Committee will make a recommendation to the Selection Committee.

***OTDA reserves the right to reject any financial proposal which offers service fees for mandatory and optional services in excess of DDD's fee schedule. DDD's fee schedule is included in Appendix V.***

### SELECTION

The Selection Committee will review the Technical Evaluation Committee and the Financial Evaluation Committee reports and recommendations, submit questions to and request additional information from the Technical and Financial evaluation committees if necessary, and make a final recommendation to OTDA's Commissioner.

### ADDITIONAL INFORMATION

- A. OTDA reserves the right to accept an offer for contract other than the lowest cost offer. OTDA reserves the right to reject any and all offers. OTDA reserves the right to reject an offer on the basis of the Offeror not demonstrating present capability to perform required services.
- B. Contents of the successful Offerors' proposals will be issued as an addendum to and be considered an integral part of the final contracts.
- C. OTDA shall in no way be liable for any cost incurred by Contractor in preparation for or prior to approval of an executed contract. All proposals become the property of OTDA and will not be returned to the Offeror.

## V. CONTRACT TERMS

1. Contractor shall perform the work and services as described in Section II and fulfill the terms and meet the performance criteria prescribed by this RFP.
2. Contractor shall perform the services described herein through the use of its own employees who shall be experienced in and qualified to perform said work and services. The work to be performed under the Contract shall be described in the proposal to OTDA pursuant to this RFP, unless otherwise approved in writing by OTDA. The work shall not be sublet or assigned, either in whole or in part without prior written approval of the OTDA.
3. Contractor and staff must be in full compliance for the term of the Contract with federal, state, and local operating requirements, as appropriate, for providing a facility and services as specified by this RFP. Compliance must include, but not be limited to, compliance with New York State Education Law Articles 130 and 131. Contractors providing medical consultative examination services must comply with those articles, which regulate the admission to and practice of the professions, including medicine. All such entities must be in compliance with the requirements of Education Law §6527 and in compliance with Article 15 of the New York State Business Corporation Law, or other corporate organization for physicians as authorized by law. All directors and officers of a corporation providing medical examinations (except those entities delineated in §6527) must be physicians. Contractor certifies that all information provided to OTDA with respect to the Procurement Lobbying Act is complete and accurate.
4. Contractor will not knowingly use any individual or entity:
  - If he or she, or a member of the family is associated with the NY Disability Determination Service (NYDDS) in a working arrangement. If related to the claimant, the provider must not accept the case;
  - Who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is under investigation, citation, suspension (including suspension stayed on compliance with compulsory terms) and/or conviction by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such individual or entity for any activity described in this section or as a result of formal disciplinary proceedings.
5. Contractor shall perform all work on premises approved by OTDA.
6. Contractor shall be responsible for compensatory cost of laboratory specimens, examination and test results, and Office records lost while in the possession of Contractor.
7. The services provided by the Contractor under the Contract include any incidental direct labor, clerical, secretarial or supervisory services, overhead, equipment, machine costs, systems development, paper, envelopes, postage, photocopying, supplies, staff transportation, transcription, telephone, telefax equipment and telecommunications charges, insurance coverage, profit margin, delivery service, staff training, provider relations, and necessary conferences and meetings with OTDA or its representatives. All contract costs and expenses for these services must be recouped through the offer rates identified in Appendix B and C of this RFP.
8. OTDA reserves the right to require the Contractor to secure and provide OTDA with a performance bond in an amount up to fifty thousand dollars (\$50,000) for the term of the Contract. In the event that OTDA determines that the Contractor has failed to provide specific services in accordance with the terms of the Contract, then OTDA may draw upon such performance bond to obtain the required services from another source or provider in an amount equal to the cost of the replacement services. Any court-assessed damages are the responsibility of the Contractor and may be charged to the performance bond.

9. The Contractor shall, at its own cost and expense, obtain and maintain in full force and effect, with sound and reputable insurers, during the term of this Contract, the following minimum insurance coverage: a) Workers' Compensation Insurance in accordance with law; and b) Comprehensive General Liability Insurance of at least \$1,000,000.

OTDA shall receive thirty (30) calendar days' advance written notice in the event of cancellation or material change in any of the above insurance coverage. The Contractor shall furnish OTDA with a certificate(s) acceptable to OTDA showing such insurance is in force during the term of this Contract and naming OTDA as a certificate holder. The insurance coverage may be provided in combinations of Primary Liability and Excess Liability (Umbrella Form).

10. All information collected in performance of the Contract is the sole property of OTDA and should be promptly returned upon termination of the contract.
11. Contractor must notify OTDA contract liaison staff of any substantial contract-related problems as soon as practicable. OTDA reserves the right to assign OTDA or contracted staff at the Contractor's facility to monitor its operation.
12. During normal business hours during the term of the Contract and for six (6) years thereafter, the Contractor shall provide all duly authorized representatives of OTDA, NYS Office of the State Comptroller and US Social Security Administration with full access to such additional records as have relationship to the subject matter herein, permitting representatives to inspect and copy such records in the home office or field offices of the Contractor. Such access includes both announced and unannounced inspections, on-site audits and regular reports from Contractor, provided, however, that such inspections, copying and auditing may be done for the exclusive purpose of assuring the State and Federal agencies involved that the Contractor is properly fulfilling its undertaking according to the terms of the Contract and to assure that reports furnished in compliance with the provisions of the Contract are true and correct. Such access shall be extended upon the understanding that all information so obtained will be accorded confidential treatment to the extent that such confidentiality is provided under applicable law.
13. Contractor agrees to retain and make available to OTDA, the NYS Office of the State Comptroller, and the US Social Security Administration and duly authorized representatives of those agencies all financial records arising out of the Contract for a period of not less than six (6) years following termination or final payment hereunder, whichever will occur later. In the event of litigation, such records shall be retained for a period of not less than three (3) years following the termination of such litigation. Such records may be maintained on microfilm, microfiche, or in computer format acceptable to OTDA.
14. Contractor is aware that OTDA is not assuring any volume and that the volume of work given to Contractor may vary due to circumstances or due to the administrative actions of OTDA. OTDA reserves the right to assign CE referrals to other contractors or providers on the basis of cost, quality, and processing time or as is necessary to meet fiscal and operational needs. In addition, OTDA represents that the volumes projected in this RFP are their best estimate.
15. The Contractor must extend the terms and conditions to any state agency in New York State. It must also extend the terms and conditions to (1) County Agencies in New York State providing human services such as income maintenance, job training, employment and social services or health related services as well as (2) Local Social Services Districts (LSSD) in New York State including New York City, which is considered a single LSSD, consisting of the Human Resources Administration, The Administration for Children's Services, and the Department of Homeless Services. In the event services are used by an LSSD, upon acceptance by the LSSD of such services, OTDA may accept the resulting bills, consistent with the terms for those services, and process said bills for payment on behalf of the LSSD. In such event, the State will subsequently make the necessary arrangements with the LSSD and the appropriate Agency(s) for reimbursement.
16. Contractor cannot refuse to provide service to any referral from OTDA, without prior approval from OTDA. OTDA is not liable for payment of expenses associated with emergency medical treatment.

17. Neither party shall be liable or deemed to be in default for any delay or failure in performance under the Contract resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, flood, the elements, acts or omissions of public utilities, or strikes, work stoppages, slow downs or other labor interruptions due to labor/management disputes involving entities other than the parties to the Contract, major fluctuations in volumes or any other causes not reasonably foreseeable or beyond the control of a party. In addition, a labor strike involving the Contractor's employees shall be deemed to be an event of Force Majeure hereunder unless there is a finding embodied in a final judgment or decree of a court of competent jurisdiction that such labor strike occurred as a result of the Contractor's willful acts or omissions. The parties are required to use their best efforts to eliminate or minimize the effect of Force Majeure events during performance of the Contract and the Contractor expressly agrees to use its best efforts to maintain operations as fully as feasible in accordance with the provisions of the Contract.
18. The Contract shall be construed and interpreted in accordance with the laws of the State of New York. Any legal proceedings against OTDA shall be brought in New York State courts.
19. Performance under the Contract shall commence February 1, 2013 or upon approval by the New York State Comptroller if later than February 1, 2013, and end on January 31, 2016. Prior to the start of the Contract, the Contractor must make all arrangements necessary to accept 100% of the assigned workload. It is understood that the Contract shall be without force and effect until approved by the Comptroller of the State of New York. By mutual written agreement, the Contract may be extended for one (1) additional two (2) year term, subject to the approval of the appropriate State agencies. In the event of extension, any changes in contract rates would be based on fluctuations in the United States Department of Labor, Bureau of Labor Statistics Historical Consumer Price Index for all Urban Consumers, Expenditure Categories, Medical care services – Physicians services and Medical care services – Services by other medical professionals. Any CPI change will be applied against each year of the contract extension. Changes in Contractor administrative and operational costs would also be factored into any Contract rate changes.
20. The Contractor agrees not to enter into any subcontracts for the performance of the obligations contained herein until each subcontract has received the prior written approval of OTDA, which shall have the right to review and approve each and every subcontract prior to giving written approval to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by bona fide, written contract. All such subcontracts shall contain provisions specifying: (1) that the work performed by the subcontractor must be in accordance with the terms of the Contract, (2) that nothing contained in the subcontracts shall impair the rights of OTDA under the Contract, and (3) that nothing contained in the subcontract, nor under the Contract, shall be deemed to create any contractual relationship between the subcontractor and OTDA. The Contractor specifically agrees that the Contractor shall be fully responsible to OTDA for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor.

This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of OTDA.

21. Except where otherwise approved by OTDA, which approval will be given only in incidental or short term situations not to exceed 10% of contract value, all work performed under this Contract must be performed in territory governed by the laws of the United States and in which the Public Acts, Records, and judicial proceedings of the State of New York are entitled to full faith and credit.
22. OTDA and Contractor agree that the Contractor is an independent contractor, and not an employee of OTDA. Contractor agrees to indemnify OTDA for any loss OTDA or the State of New York may suffer when such losses result from claims of any person or organization (excepting only OTDA) injured by the negligent acts or omissions of Contractor, its officers and/or employees or subcontractors. Contractor shall be liable without limitation, for direct damages for personal injury, death or damage to real property or tangible personal property attributable to the negligence or other tort of Contractor, its officers, employees or agents. Furthermore, Contractor agrees to indemnify, defend, and save harmless the State, OTDA and its officers, agents, and employees from any and all claims and losses accruing or resulting to any contractor, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in

connection with the performance of the Contract, and from all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Contractor in the performance of the Contract, against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under the Contract, or based on any libelous or other unlawful matter contained in such data or written material in any form produced pursuant to this Contract. Furthermore, the Contractor, its agents, servants, and employees hereby agree to hold harmless OTDA, the State, their agents, servants and employees from any action arising out of Contractor's use of or presence on the property of the State, or OTDA while performing services under the Contract.

Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, OTDA shall hold Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of OTDA or of its officers or employees when acting within the course and scope of their employment.

23. Non-Discrimination, Equal Employment Opportunity (EEO) and Women-Owned Business Enterprise (M/WBE)

All work conducted under this contract must be in compliance with the specifications set forth in the applicable Request for Proposal and OTDA's policies and procedures set forth in Appendix A, Standard Clauses for NYS Contracts, and as may be amended from time to time.

By submission of its bid/proposal, the successful Contractor agrees that it will not discriminate against any employee or applicant for employment to the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, and as more fully set forth in paragraph five of Appendix A. By submission of its bid/proposal, the successful Contractor further agrees that it will comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144), and as more fully set forth in paragraph twelve of Appendix A. The successful Contractor further agrees that it will comply with OTDA's Appendix Z, attached and incorporated by reference herein, for the specific EEO/MWBE requirements and associated forms required for this procurement.

24. Equal opportunity and affirmative action shall be provided to all protected class persons. Groups of people identified by law that are specifically protected encompass minorities, women, handicapped veterans, persons with disabilities and others by virtue of the law or court decisions interpreting the law. In the case of Vietnam era veterans, equal opportunity and affirmative action is provided for in Executive Order No. 6, issued February 18, 1983, and most recently continued by Executive Order No. 2, issued January 1, 2011.

25. In the event that any significant services rendered by the Contractor are discontinued by OTDA, or in the event of OTDA's actions or policy decisions which result in significant reductions in expenses incurred by the Contractor, the parties will re-negotiate in good faith to establish the amount by which the Contractor's expenses are reduced in the cost per service is otherwise payable to the Contractor. The benefit of said agreed, reduced operating charges shall be one hundred percent (100%) to OTDA.

In the event Contractor initiates significant improvements in the system or implementation thereof, as for example through equipment selection or utilization, enhancements in testing equipment or file management methods, which result in significant reductions in expenses incurred by the Contractor, OTDA and Contractor will negotiate in good faith to allocate a portion of such reduced expenses to a reduction in the cost per services otherwise payable to the Contractor. Unless otherwise agreed to by the parties, the benefit of such reduced expenses shall be thirty-five percent (35%) to OTDA and sixty-five (65%) to the Contractor.

26. NOTICES

- A. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
- (a) via certified or registered United States mail, return receipt requested;
  - (b) by facsimile transmission;
  - (c) by personal delivery;
  - (d) by expedited delivery service; or
  - (e) by e-mail.

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

**State of New York Office of Temporary and Disability Assistance**

**Name:** Lawrence Rockefeller  
**Title:** Director, Budget and Finance  
**Address:** One Commerce Plaza  
Albany, NY 12260  
**Telephone Number:** 518-473-0360  
**Facsimile Number:** 518-408-3833  
**E-Mail Address:** [Lawrence.Rockefeller@ssa.gov](mailto:Lawrence.Rockefeller@ssa.gov)

**[Contractor Name]**

**Name:**  
**Title:**  
**Address:**  
**Telephone Number:**  
**Facsimile Number:**  
**E-Mail Address:**

- B. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- C. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.
27. The Contractor hereby assures OTDA that with respect to its performance under the Contract and all other activities in which it is engaged, the Contractor is in substantial compliance and will continue to be in substantial compliance throughout the life of the Contract with any and all applicable statutes and regulations. This includes, but is not limited to substantial compliance with Titles II and XVI of the Social Security Act and regulations promulgated by the Social Security Administration at Title 20, Chapter III, Code of Federal Regulations (CFR) Parts 404 and 416.
28. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). In the event of an information security breach, the Contractor must within one hour of discovery notify the Division of Disability Determinations (DDD) and OTDA's Information Security Officer, and adhere to State and OTDA procedures regarding information security incident reporting and management. Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

Contractor must agree to comply fully with all OTDA security procedures. Contractor agrees that its officers, agents, employees and subcontractors may be required to consent to undergo background security clearances, to include fingerprinting and background checks, as may be required by OTDA,

prior to being authorized to work pursuant to the terms of this Agreement. If deemed necessary at the sole discretion of the State, OTDA shall arrange for the scheduling of fingerprinting and shall pay any processing fees, such as those prescribed by the New York State Division of Criminal Justice Services. Any fees otherwise related to conducting background checks will be paid by the Contractor.

In determining the fitness of an employee to perform duties under the terms of this Agreement, the Contractor will conduct a criminal history/security background check on all employees. The Contractor shall determine the method and frequency by which it conducts and confirms the fitness of its employees to perform duties under this Agreement, which determinations shall be incorporated into a comprehensive plan. Contractor's comprehensive plan for the conduct of criminal history/security background checks will be submitted to OTDA within 90 days of the approval of this agreement by the State Comptroller and shall be subject to approval by the OTDA, which approval shall not be unreasonably withheld; OTDA may request revisions to the comprehensive plan from time to time, as it determines appropriate. If the Contractor is unable to determine an employee's fitness due to the results of a criminal history/security background check, as discussed herein, the Contractor shall forward a description of the results to the OTDA, for review and determination. The Contractor's agreement to comply with the provisions of this section is a material representation of fact upon which reliance was placed when the OTDA determined to enter into this Agreement. In conducting a criminal history/security background check, the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. If it is later determined that the Contractor knowingly, rendered a false positive determination of an employee's fitness, failed to conduct a criminal history/security background check, or failed to reasonably interpret the results in confirming an employee's fitness to perform duties under the terms of this Agreement, in addition to any other remedies available to the OTDA, such as liquidated damages, the OTDA may terminate this Agreement for cause. The Contractor shall provide immediate written notice to the OTDA if at any time the Contractor learns that its determination of an employee's fitness to perform duties under the terms of this Agreement was erroneous or has become erroneous by reason of changed circumstances.

During the term of this contract and thereafter, the Contractor shall respect the confidentiality of confidential data, information, and other such matters disclosed and entrusted to him/her in the contract, or upon termination thereof, the Contractor shall return to the OTDA, all such confidential matters in their possession belonging to the other party and further, agrees not to use such information without the expressed written permission of the OTDA.

The Contractor will ensure that the provisions of this section are incorporated within all sub-contracts, and acknowledges the responsibility for ensuring that these provisions are fully complied with by all subcontractors.

Contractor will be assessed the greater of all direct costs incurred as a result of an employee or subcontract employee's breach of Paragraph 29 - Contract Terms and Conditions, Security, Confidentiality and Privacy of Information and Information Assets, resulting from the Contractor's or subcontractor's negligence, malfeasance or misfeasance in determining the fitness of such employee pursuant to the Contractor's approved comprehensive plan for the conduct of criminal history/security background checks, or five (5) times the employee's annual salary.

29. Security, Confidentiality and Privacy of Information and Information Assets

- A. The Contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information and information assets relating to Public Assistance or Medical Assistance clients and providers of services or benefits, which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the laws of the State and of the United States and any regulations promulgated thereunder. Unauthorized disclosure of Child Protective Services data is a crime under Section 422(12) of the Social Services law.
- B. Individually identifiable information relating to any eligible client or provider shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees or subcontractors, without the prior written approval of the OTDA.

- C. All other information about or from the OTDA's operations, policies, and procedures not covered by sections A or B of this paragraph, must be kept confidential as if it were so covered. The use of any information obtained by the contractor in the performance of its duties under this Agreement shall be limited to purposes directly connected with such duties.
- D. The Contractor shall promptly advise the OTDA of all requests made of Contractor for information related to the contract.
- E. The Contractor must comply with the "Information Security Breach and Notification Act" (also known as the "Internet Security Privacy Act" – Article 2 of the State Technology Law and Chap 4212, Laws of 2005). In the event the Contractor has reason to believe that there has been unauthorized access to and/or use of the OTDA's data or the data system, within one hour of discovery the Contractor must notify the Division of Disability Determinations(DDD) and OTDA followed by written notification. The Contractor must cooperate with activities necessary for the OTDA to determine the need for notification and/or to provide the notification(s) required. Within twenty-four (24) hours of the notification by the Contractor, the Contractor must report to the OTDA the steps taken or proposed to be taken in response to the instance of unauthorized access. The Contractor must also notify the OTDA of the steps taken to prevent similar instances in the future as soon as is practicable after the unauthorized access is discovered.
- F. The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or subcontractors contains a provision that conforms to the provisions of Paragraph 29.
- G. The Contractor will use at least the same care and discretion to avoid disclosure, publication or dissemination of confidential information as it uses with its own similar information that it does not wish to disclose, publish or disseminate.
- H. The obligation(s) and limitation(s) set forth herein regarding the confidential information shall not apply to information which is:
  - 1. At any time in the public domain other than by a breach of this Agreement on the part of the receiving party.
  - 2. At any time rightfully received from a third party which has the right and transmits it to the receiving party without any obligation of confidentiality.
  - 3. Rightfully known to the receiving party without any limitation on use or disclosure prior to receipt of the same from the furnishing party.
  - 4. Independently developed by personnel of the receiving party who have no access to confidential information received from the furnishing party.
  - 5. Generally made available to third parties by the furnishing party without any restriction concerning use or disclosure.
  - 6. Required to be disclosed by law or judicial process.
- I. Except for personal information relating to clients and providers which shall be kept confidential pursuant to requirements of State or Federal laws, and information relating to the business and finances of the State or the Contractor, confidential information disclosed by one party to the other continues to be subject to this Agreement for six years following termination of this Agreement. No obligation of confidentiality applies to:
  - 1. Information the Contractor already possesses without an obligation of confidentiality.
  - 2. Information the Contractor develops independently from publicly available data.
  - 3. Information the Contractor receives without obligation of confidentiality from a third party.

4. Information that is, or becomes, publicly available without breach of this Agreement.
- J. In the event either party receives a subpoena or other validly issued administrative or judicial process requesting confidential information of the other party, it shall, to the extent permitted by law, provide prompt notice to the other of such receipt prior to disclosure or action. The party receiving the request shall thereafter be entitled to comply with such subpoena or other process to the extent permitted or required by law.

K. Public Information

Disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Section 87 of the Public Officers Law. Consistent with FOIL and applicable laws: The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under FOIL; information constituting trade secrets, for purposes of FOIL, must be clearly marked and identified as such upon submission; if the Contractor intends to seek an exemption from disclosure of these materials under FOIL, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; acceptance of identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL; and determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State.

- L. All Contractor or Subcontractor staff performing under this Contract must commit to and sign a Non-Disclosure Agreement, attached herewith in Appendix Y, "OTDA Non-Disclosure Agreement". Such signed agreements must be submitted to the OTDA Quality Assurance Contract Manager prior to staff commencing work on the project. The Contractor's Project Manager is responsible for ensuring that all contractor provided resources submit said Non-Disclosure Agreement.

M. Rights to Information

1. Except as otherwise provided herein, the ideas, concepts, know-how or techniques developed during the course of this Agreement by Contractor personnel or jointly by the Contractor and the OTDA can be used by either party in any way it may deem appropriate.
2. Each invention, discovery, or improvement and specifically, new software programs and associated documentation as well as modification, improvements and enhancements to existing software which includes ideas, concepts, know-how or techniques developed in the course of this Agreement shall be treated in accordance with the following general principles:
  - a. If a modification, improvement or enhancement to software generally licensed by the Contractor to end-users occurs, then such modifications, improvements, and enhancements shall be the property of the Contractor and the Contractor hereby grants to the OTDA a non-transferable (except to sibling state agencies to the OTDA), non-exclusive, irrevocable and royalty-free license to use and any software or instruction manuals necessary to use.
  - b. If a modification, improvement, or enhancement to application software which has not been licensed to the OTDA by the Contractor and is used by the Contractor in its provision of services occurs, then such modifications, improvements and enhancements shall be the property of the Contractor.
  - c. If a modification, improvement or enhancement to application software which is owned by the OTDA and has been licensed to the Contractor occurs, then such modifications, improvements, and enhancements shall be jointly owned, without right of accounting.

- d. If a modification, improvement or enhancement to application software developed exclusively by the Contractor for use by the OTDA occurs, then such modifications, improvements, and enhancements shall be jointly owned without right of accounting. In all other cases, such modification, improvements and enhancements shall remain the sole property of the Contractor.
  - e. If a new application software program for the OTDA with development costs partially funded by the Contractor occurs, then such application software program shall be jointly owned, without right of accounting.
  - f. If a derivative of existing applications software, that is the property of the Contractor with development costs funded in whole or in part by the OTDA occurs, then such derivative application software shall be jointly owned, without right of accounting.
  - g. If a new application program for the OTDA which has been entirely funded by the OTDA occurs, then such new application software shall be the property of the OTDA.
  - h. If a new application software program for the OTDA with development costs partially funded by the Contractor or derived from the existing application software which is the property of the Contractor occurs, then such applications software program shall be jointly owned, without right of accounting.
- 3. Notwithstanding the provisions set forth above, the parties agree that the United States Department of Health and Human Services, the Social Security Administration and the United States Department of Agriculture shall be granted a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such documents and software and to authorize others to do so for government purposes to the extent that the services which resulted in the production of such documents and software are Federally funded. The grant excludes the proprietary products, documentation, materials and information (and derivative works thereto) of the Contractor, the Contractor's sub-contractors and third party product providers.
  - 4. The OTDA acknowledges that the provision of Contractor services under this Agreement does not create a license by the OTDA to use any software generally licensed by the Contractor to end-users and if any such software is to be used in connection with the provision of Services hereunder, a separate license is necessary. Ownership of software modifications, improvements, and enhancements does not create any interest in or right to use underlying software, absent ownership of the underlying software or an express conveyance of rights or grant license from the party owning the underlying software.
  - 5. The above provisions shall not preclude the Contractor from developing materials, including software, which are similar to that furnished the OTDA in the course of providing services under this Agreement.
- N. Paragraph 29 will survive termination or cancellation of this Agreement.
  - O. Contractor agrees to comply fully with all current OTDA security procedures. OTDA security procedures established after the date of this agreement shall be subject to the Contractor's review and consent, which shall not be unreasonably withheld. Contractor agrees that its officers, agents, employees and subcontractors may be required to consent to undergo background security clearances, to include fingerprinting and background checks, as may be required by OTDA, prior to being authorized to work pursuant to the terms of this Agreement. Specifically, each prospective and current employee of Contractor who may have access to OTDA's designated confidential information, designated to work under this Agreement may be required to submit certain identifying information and/or to be fingerprinted. If deemed necessary at the sole discretion of the State, OTDA shall arrange for the scheduling of fingerprinting and shall pay any processing fees, such as those prescribed by the New York

State Division of Criminal Justice Services. Any processing fees otherwise related to conducting background checks will be incurred by the Contractor.

30. All systems software developed by the Contractor during the term of this Contract shall be the property of OTDA. Contractor shall provide copies of such software to OTDA. Any non-proprietary software the Contractor has acquired to accomplish its functions as required by this Contract, and which it is able to transfer, shall be made available to OTDA. The Contractor shall, in selecting any proprietary software, obtain software which is readily available to other users. Any supplies or inventory of any kind provided or paid by OTDA which is in the possession of the Contractor at the termination of this Contract shall be turned over to OTDA.
31. The Contractor shall supply their own personal computers and printers, and related software and telecommunications equipment to be used for OTDA tasks including the receipt of electronic CE orders, appointment scheduling, report preparation and transmittal, voucher billing, and other items as identified by OTDA. Additionally, the Contractor will be responsible for electronically transmitting certain information as required by OTDA. The Contractor shall supply the appropriate software to access the Internet. OTDA will work closely with the Contractor in transitioning/setting up the electronic telecommunication system.
32. Disputes:
  - A. This disputes provision shall apply to any dispute of the parties relating to performance under the Agreement except liquidated damages. Any dispute concerning any question of fact or law arising under the Agreement, which is not disposed of, by mutual agreement of the parties shall be initially decided by the adjudicator designee (hereinafter "Designee") of the Director the Bureau of Contract Management (hereinafter "Director"). The Director shall also designate the person who will present OTDA's position in the dispute (hereinafter "Advocate").
  - B. Within thirty days of such designations, the Advocate will state and brief the Designee on OTDA's position on the dispute. The Contractor will then have thirty days to make its submission; the submission may include any material the Contractor deems relevant to the dispute. All documents may be sent either by surface mail, by carrier, or electronically.
  - C. The Advocate will have a right to submit a response to the Contractor's submission. The response must be limited to the material rebutting evidence and arguments raised by the Contractor in its most recent submission and must be submitted within fifteen days of receipt of the Contractor's submission. If the Advocate submits a response, the Contractor will have thirty days to prepare and submit a response to the Advocate's rebuttal submission; this response shall consist wholly of material which responds to evidence or arguments raised in the Advocate's rebuttal. Any actual submission by the Advocate shall generate a right of rebuttal by the Contractor.
  - D. The Advocate and the Contractor will be informed in writing by the Designee when the submission process is deemed complete. The Designee shall have the right to take administrative notice of relevant matters of law and fact as he believes appropriate, in accordance with general principles of Administrative Law.
  - E. The Designee will prepare and forward the recommended written decision to the Director. The Director shall: (a) evaluate the Designee's findings and recommendations, (b) review the materials presented by the Contractor and the Advocate, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the dispute either ratifying, modifying, or reversing the recommended decision. The Director's decision will be rendered within 45 days of the date when the submission process is deemed complete pursuant to 32.D, above.
  - F. A copy of the Director's decision stating the reason(s) upon which it is based and informing the Contractor of the right to appeal an unfavorable decision to the General Counsel of OTDA, will be issued to both parties. The dispute decision shall be deemed a final and conclusive agency decision unless a written notice of appeal is received no more than 15 calendar days after the date the decision is received by the Contractor. Such notice of appeal must be filed with the General Counsel of OTDA.

- G. The General Counsel of OTDA or his designee(s) shall hear and make a final decision on all appeals. A formal dispute appeal may not introduce new facts unless responding to facts or issues unknown to the Contractor prior to the final dispute decision. The General Counsel's decision will be rendered within 30 calendar days of the date that the notice of appeal is received by the General Counsel.
  - H. If the Contractor is unwilling to accept the decision rendered through this procedure or if a decision is not made within 90 calendar days after the record is deemed final, it may then pursue its normal legal remedies de novo, but it is specifically agreed that any and all reports rendered through this procedure shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Agreement by the State shall govern operation thereunder and the Contractor and OTDA shall continue to perform under the Contract.
  - I. The Director and General Counsel shall have the power to change any or all of their designees or otherwise alter the rules of proceeding upon written notice to the Contractor.
  - J. The Contractor shall be required to bring all legal proceedings relating to this Agreement against OTDA or the State of New York in a court of competent jurisdiction in the State of New York.
33. The contractor is responsible for safeguarding Personally Identifiable Information (PII) and within one hour of discovery report any loss to the appropriate Division of Disability Determinations (DDD) and OTDA officials. Contractors are subject to SSA confidentiality of information requirements while accessing information from SSA systems and should be authorized to only access those functions necessary to perform their jobs. The access should be restricted to the minimum necessary. The contractor shall ensure that all employees report lost or possibly lost PII within one hour of discovery to DDD and OTDA. The contractor shall gather the following information to report the loss of PII: Contact information, description of loss (including time and location), what safeguards were used, which components (division or areas) were involved, whether external organizations were contacted, and whether other reports have been filed (e.g. law enforcement).
34. Neither the Contractor nor any of the Contractor's employees involved in processing reports shall disclose any information that identifies the claimant, physician, or facility without documented permission of OTDA. Such disclosures will subject the Contractor to the penalties of the Federal Privacy Act. The Contractor must also certify compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Sensitive records ready for disposal must be destroyed by burning, pulping, shredding, macerating, or other suitable similar means that ensures the information in the record is definitively destroyed. Definitively destroying the records means the material cannot be reassembled and used in an inappropriate manner in violation of law and regulation. Sensitive records are records that are national security classified or exempted from disclosure by statute, including the Privacy Act, or regulation. Electronic records must be definitively destroyed in a similar manner that prevents reconstruction as well.
35. The Contract shall be subject to the following termination provisions:
- A. By mutual written agreement of the contracting parties.
  - B. By OTDA for cause upon the failure of the Contractor to comply with the terms and conditions provided that OTDA shall give the Contractor written notice via registered or certified mail with return receipt requested, or shall be delivered in hand and a receipt granted, specifying Contractor's failure. Such termination shall be effective immediately upon receipt of such notice, established by receipt returned to OTDA.
  - C. All or any part of this Agreement may be terminated if OTDA deems that termination would be in the best interest of OTDA provided that OTDA shall give written notice to the Contractor not less than 30 calendar days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of Contractor's receipt for notice in the case of hand delivery. In the case of termination under this section, OTDA agrees to pay the Contractor for contract work performed

and reasonable and appropriate expenses incurred in good faith. OTDA will not be obligated to pay the Contractor for lost profits. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.

- D. OTDA reserves the right to terminate the Contract should the Contractor fail to substantially meet all Federal, New York State, and/or Local regulations.
- E. Should Federal or State funds for this Contract become unavailable, OTDA shall deem this Contract terminated immediately without termination costs.
- F. Notwithstanding the foregoing termination provisions in paragraphs 35A through 35E the Contractor understands that the OTDA's Division of Disability Determinations (DDD) functions under the rules and guidance of the Social Security Administration. Therefore, OTDA reserves the right to opt out of this Agreement at any time for any reason without penalties to either OTDA or the Social Security Administration as long as 90 days written notice is provided to the Contractor.
- G. Should the Contract be terminated for any reason or circumstances other than specified and it is determined that OTDA is responsible for such termination, then in that event, the Contractor agrees to accept and OTDA agrees to pay as full compensation for any damages the Contractor actually suffers as a result thereof, the Contractor's reasonable and appropriate expenses incurred in connection with the Contract. The Contractor agrees not to seek any punitive damages, compensation for lost profits or any other additional compensation or redress as a result of any such event.
- H. In the event of termination based on any of the provisions of this section, the Contractor shall not incur new obligations for the terminated portion after the notice of effective date and shall cancel as many outstanding obligations as possible.
- I. The Contractor agrees not to engage in any conduct which the Contractor knows or has reason to believe would violate or would assist an employee of OTDA in violating Sections 73 or 74 of the Public Officers Law. If OTDA determines that the Contractor has violated the provisions of this subdivision, OTDA shall be entitled to terminate the Contract.
- J. The Contractor further recognizes that an administrative or judicial finding that a Contractor has violated any of the statutes specified in the Contractor/Subcontractor Background Questionnaire completed prior to the award of the Contract or failure to notify OTDA of any investigation, citation, suspension (including suspension stayed on compliance with compulsory terms) and/or conviction by a State agency of a matter within its jurisdiction that could reasonably be construed to affect the Contractor's performance under the Contract shall entitle OTDA to terminate this Contract, at its discretion, within thirty days after the Contractor notifies OTDA of such finding or OTDA notifies the Contractor that it has become aware of such finding.
- K. Except as otherwise provided in the Contract, any termination of the Contract by OTDA under this section shall be deemed to be a termination of the Contract for cause. The remedies set forth in this section shall be in addition to any other remedy available to OTDA under this Contract or under any other provisions of law.
- L. To the extent permitted by law, this Contract may be deemed in the sole discretion of OTDA terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by OTDA to the Contractor.
- M. OTDA reserves the right to terminate this contract, as amended, in the event it is found that the certification filed by the Contractor in accordance with the Procurement Lobbying Act is intentionally false or intentionally incomplete. Upon such finding, OTDA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

- N. Upon termination, for any reason, the Contractor shall return to OTDA, all such confidential matters and confidential information subject to the confidentiality, privacy and security provisions set forth in Paragraph 29 in their possession belonging to OTDA, and further, agrees not to use such information without the expressed written permission of OTDA.
36. In the event the Contractor knows or has reason to believe the Contract is or will be terminated for any reason, the Contractor must notify OTDA immediately and provide a termination/transition plan within 24 hours of such notice. The parties hereto agree that the following procedures shall be applied in the event of any termination of the Contract. It is mutually understood that an orderly and controlled transition from the existing Contractor to any successor, be it OTDA or another contractor, is essential to OTDA in the continuation of its mission and to preserve the benefit to OTDA or other successor, of any systems, procedures and operating practices developed under the Contract. The Contractor's responsibilities during the Contract close-out period (final 30 days of the Contract) shall consist of providing the successor's management personnel with access to the procedures developed for completion of services and of cooperating to achieve an orderly transition of services. The Contractor will not be entitled to any additional reimbursement for close-out services provided.
37. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in an amount equal to two (2) times the value of the Contract or \$1,000,000, whichever is greater. Other than where expressly allowed elsewhere in the master agreement, the Contractor and OTDA shall not be liable for indirect, incidental, special, or consequential damages (including but not limited to loss of profit, or revenue), even if the Contractor and OTDA has been advised of the possibility of such damages. The warranties set forth herein are in lieu of all other warranties; express or implied; including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Where express loss liabilities set forth herein provide for a higher loss limitation liability than as set forth in this paragraph, or where such express provisions impose Contractor liability "without limitation", such express warranties, obligations and indemnifications shall supersede the loss limitation cap contained in Paragraph 37. For any suit, action, claim, damages or costs arising under or connected to the title, patent and copyright actions by third parties, Contractor shall be fully liable for damages without limitation. Notwithstanding the foregoing, Contractor remains liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property or intellectual, property attributable to the negligence or other tort of Contractor, its officers, employees or agents.
38. OTDA reserves the right to assign all or a portion of Contractor's work to another provider if Contractor in OTDA's opinion fails to meet required services and Contract terms.
39. OTDA reserves the right to deduct up to \$15 per report if the Contractor fails to meet the Contract's processing time and/or quality requirements on 25% or more of the reports prepared as determined by OTDA on a sample basis. If deemed to be out of compliance based on OTDA's sample (minimum of 100 reports reviewed), all payments processed for a period of up to the next 30 days will be deducted up to \$15 per report. OTDA will notify the Contractor in writing if this option is exercised.
- OTDA also reserves the right to withhold reimbursements under the Contract should Contractor fail to perform fully during any month. The retainage or portion thereof will be paid to the Contractor when OTDA has reason to believe that the Contractor has returned to full performance.
40. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.ny.gov/epay/index.htm](http://www.osc.ny.gov/epay/index.htm), by email at [epunit@osc.ny.gov](mailto:epunit@osc.ny.gov) or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptrollers' electronic payment procedures, except where OTDA has expressly authorized payment by paper check as set forth herein.

The Contractor acknowledges that payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by OTDA, in OTDA'S sole discretion, due to extenuating

circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices as established by the State Comptroller.

The Contractor shall also comply with the State Comptroller's requirement to file a Substitute Form W-9. The form and the instructions for completing the form, as well as the Electronic Payment Authorization Form are located at [Electronic Payment and Substitute W-9](#).

Contractor shall be reimbursed for services performed under the Contract based on the submission of an Order and Voucher Form (CE-7) satisfactory to OTDA and the Comptroller of the State of New York. Services shall be invoiced at the offer rate for each procedure. Bills must conform to OTDA's fiscal payment process. Contractor will submit individual CE-7's to OTDA for each referral. The Contractor shall submit CE-7's certifying the amount reimbursable; and shall maintain accounting records in accordance with Paragraphs 12 and 13, subject to OTDA examination and audit. It is the Contractor's responsibility to insure proper and timely delivery of services ordered pursuant to the contract resulting from this RFP and the proper and timely submission of the associated Order and Voucher Form (CE-7). The following payment policy will control. If an exam is cancelled by OTDA prior to the exam date and the provider has received timely notice of the cancellation yet conducts the exam anyway, no payment will be made. In those instances where extenuating circumstances exist, OTDA's Medical Relations Officer will determine if sufficient information is available and may authorize payment.

If a Consultative Examination Report is certified but a voucher is not received by OTDA within 90 days of certification, the voucher will be cancelled. OTDA's Medical Relations' Officer may authorize payment if, in their judgment, extenuating circumstances arise.

If 150 days elapse from the date of CE order and the case is closed and no report and voucher has been received by OTDA, the consultative examination and voucher will be deemed cancelled. OTDA's Medical Relations' Officer may authorize payment if, in their judgment, extenuating circumstances arise.

If the contract is extended beyond January 31, 2016, the rates are subject to further negotiations by the parties and subject to the approval of the appropriate state agencies.

41. Additional procedures can be introduced by OTDA and included under the provisions of the Contract. OTDA reserves the right to modify examination, testing, reporting, and procedural requirements over the term of the Contract. Rates associated with additional procedures or substantial modifications may be re-negotiated. Any significant additional services will be subject to the approval of the Office of the State Comptroller.
42. The Contractor must verify the claimant's identity; e.g. driver's license, State ID or any other method for verifying an individual's identity deemed acceptable by law or regulation. OTDA reserves the right to require the use of finger imaging for either or both Title II or XVI claimants.
43. The Contractor agrees, pursuant to Section 1352, Title 31, United States Code, not to expend Federal appropriated funds received under this Contract to pay any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement. The Contractor agrees to complete and submit a "Certification Regarding Lobbying" form in accordance with its instructions.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract or the underlying Federal grant, the Contractor agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The Contractor shall include the provisions of this Section in all subcontracts under the Contract

and require that all subcontractors certify and disclose accordingly.

44. The Contractor understands that it must comply with federal Executive Order 11246, the Copeland "Anti-Kickback Act" (18 USC 874), Section 306 of the federal Clean Air Act, Section 306 of the federal Clean Water Act, and that it must certify that neither it nor its principals are debarred or suspended from federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by OTDA (see federal Executive Order 12549 and 7 CFR Part 3017).
45. Vendor Responsibility: The Offeror that is awarded this contract shall update the Vendor Responsibility Questionnaire whenever such information changes and prior to any contract extensions and/or amendments. In the case of an assignment, a Vendor Responsibility Questionnaire should be completed for the Contractor and Subcontractors. If the Offeror is determined, on the basis of new or previously undisclosed information, to be not responsible, the contract may be terminated, at OTDA's sole discretion.

The Office of Temporary and Disability Assistance recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System; however, vendors may choose to complete and submit a paper questionnaire.

To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [http://www.osc.ny.gov/vendrep/vendor\\_index.htm](http://www.osc.ny.gov/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.ny.gov](mailto:ciohelpdesk@osc.ny.gov). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.ny.gov/vendrep](http://www.osc.ny.gov/vendrep) or may contact the Office of Temporary and Disability Assistance or the Office of the State Comptroller's Help Desk for a copy of the paper form.

46. New York State Sales and Compensating Use Taxes: Tax Law Section 5-a, which was added to the Tax Law under Part N of Chapter 60 of the Laws of 2004, imposes upon certain contractors the obligation to certify whether or not the Contractor and its affiliates are required to register to collect state sales and compensating use tax. Where required to register, the Contractor must also certify that it is, in fact, registered with the New York State Department of Taxation and Finance (DTF). The law prohibits the New York State Comptroller, or other approving agency, from approving a contract awarded to an Offeror meeting the registration requirements but who is not so registered in accordance with the law.

Pursuant to Tax Law Section 5-a, the Contractor will be required to complete and sign, under penalty of perjury, the Contractor Certification Form ST-220-CA. The Contractor must also submit a copy of the Certificate of Authority, if available, for itself and any affiliates required to register to collect state sales and compensating use tax. If Certificates of Authority are unavailable, the contractor, affiliate, subcontractor or affiliate of subcontractor must represent that it is registered and that it has confirmed such status with DTF.

47. The parties agree to be bound by the additional terms contained in Appendices A and A.1 which are attached hereto and made a part hereof.