



Office of Temporary
and Disability Assistance

Release Date: April 22, 2015

Request for Proposal

**Brooklyn Consultative Examination
Contract Medical Provider**

Submission Deadline: June 10, 2015

CE CONTRACT MEDICAL PROVIDER RFP

Brooklyn

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Glossary of Terms
(Alphabetical Order)

Bidder/Offeror	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".
Contractor	Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.
Non-Responsibility Determination	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.
Personally Identifiable Information (PII)	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.
Procurement Period	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.
Reportable PII Loss	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.
Subcontractor	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.
Vendor	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 to establish a site in the borough of Brooklyn, for the purpose of performing all mandatory medical examinations and ancillary testing of claimants applying for or currently receiving Social Security disability benefits.

B. Contract Duration

The term of the contract resulting from this RFP is to be a five (5) year contract for the period January 5, 2016 through January 4, 2021.

C. Timetable

1. Release of RFP	April 22, 2015
2. Final Date for Receipt of Questions	May 13, 2015
3. Official Answers to Questions	May 20, 2015
4. Closing Date for Receipt of Proposals	June 10, 2015

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. Eastern Standard Time, on May 13, 2015 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 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 518-626-3042 or ny.dd.contracts@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 individuals and entities 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: Krista Rock, 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;
- Communications between an Offeror and OTDA that solely address the determination of responsibility by OTDA of the Offeror.

OTDA employees other than the designated POC who are contacted by an individual or entity 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
Division of Disability Determinations
New York State Office of Temporary & Disability Assistance
One Commerce Plaza, 10th Floor
99 Washington Avenue
Albany, New York 12210
Telephone #: 518-626-3042
Fax #: 518-626-3012

Other permissible points of contact for the Offeror:

Kathleen Meerwarth
Telephone # 518-486-6352
Fax # 518-474-3555

Melinda Kuiken
Telephone #518-626-3042
Fax # 518-626-3012

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 – Brooklyn."

Proposals must be received no later than 3:00 p.m. Eastern Standard Time, June 10, 2015. OTDA may reject any Bid Proposal received after the proposal due date and time. 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 technical and financial proposals must be organized into separately sealed volumes.

Offeror must provide six paper copies of the financial proposal including one (1) original marked "ORIGINAL". Offeror must provide six paper copies of the technical proposal including two (2) originals marked as "ORIGINAL". Additionally, offeror must supply two (2) electronic copies on CD of the technical and financial proposals in standard formats such as Microsoft Word and Excel. For documents not generally created in Word or Excel such as EKG's or PFT's, these items may be submitted in Tiff, PDF or other generally acceptable formats. The electronic financial and technical proposals must be on separate CDs. All financial proposals (paper and electronic) must be sealed separately from the technical proposals (paper and electronic) and must be delivered or mailed return receipt requested to:

Ms. Kathleen Meerwarth
Bureau of Contract Management
New York State Office of Temporary and Disability Assistance
40 North Pearl Street, 12th Floor, Sec. D
Albany, NY 12243

Any contact by prospective Offerors or their agents regarding the delivery location or directions for delivery may be addressed to Kathleen Meerwarth 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 Primary Point of Contact, 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 Primary Point of Contact 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 the 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. Information relating to Contractor price submissions, including commercial, book or listing pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to the Contractor. 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. OTDA 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. The OTDA reserves the sole discretion for the volume of work provided to Contractor pursuant to this Agreement, and makes no commitment to any specific minimum volume of work.

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. Cancel the RFP at its sole discretion
 - b. Reject any or all proposals received in response to this RFP.
 - c. 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 22, 2015.

- d. Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights.
- e. Amend any part of this RFP, at any time, upon written notification to Offerors.
- f. Direct any Offeror to submit proposal modifications addressing subsequent RFP amendments.
- g. Require that any or each Offeror provide an oral presentation of its proposal.
- h. Accept all or part of a selected Offeror's proposal.
- j. Make typographical corrections to proposals, with the written concurrence of the Offeror.
- k. Correct computational errors with the written concurrence of the Offeror.
- l. Change any of the scheduled dates, including start dates, stated herein upon notice to the Offerors.
- m. Request Offerors to clarify or revise their bid proposal(s) and/or submit additional information pertaining to their bid proposal.
- n. Terminate review of proposals found technically or financially deficient.
- o. Disqualify any Offeror whose conduct or proposal fails to conform to the requirements of this RFP.
- p. Request best and final Financial Proposals from Offeror who submits a technically acceptable proposal.
- q. Eliminate any requirements unmet by all Offerors upon notice to all parties submitting proposals.
- r. Waive procedural technicalities in Bid Proposals received, upon notification to all Offers.

K. Minimum Qualifications Required of Offerors

Offerors must clearly demonstrate a minimum of five (5) years experience performing the volume 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

The Contracts resulting from this procurement will be funded, in whole or in part, with Federal funds. 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. 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.

O. 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 the DDD Fee Schedule 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 "Mandatory". 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, certified (psychologists) or otherwise qualified (speech-language pathologist) and currently registered in New York State.
- C.2. Physicians must be currently licensed, have the training and experience to perform the type of examination or test requested and not be currently excluded, suspended or otherwise barred from participation in Medicare or Medicaid programs or any other Federal or federally assisted programs.
- 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. The consultative examination contractor must provide training to all appropriate staff in performing CEs and preparing CE reports.
- 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 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 each rate provided in your cost proposal, but rates proposed cannot exceed the fee schedule located in Appendix N.**
- C.8. On occasion Contractor's medical staff may be required to testify at the SSA Office of Disability Adjudication and Review.
- 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. A person may not conduct a consultative examination 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, Pediatric, and Speech-Language. Licensed psychologists can perform psychiatric examinations, provided the requirement is met as outlined in C.5. See Appendix R.
- D.4. Case consult services also are included as mandatory services for the following specialties: internal medicine, psychiatry, pediatrics, psychology, and speech-language. These specialist services may 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 and/or electronic, 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 an OTDA specified office, and travel time would not be included.

- D.5. The optional examinations include Ophthalmology and Otolaryngology for this location.

D.6. Scheduling intervals must allow sufficient time to permit the Contractor to take a case history and perform the examination, including any needed tests. Use the following minimum scheduling intervals, i.e., time set aside for the individual, not the actual duration of the CE.

- Comprehensive general medical, musculoskeletal or neurological examinations: at least 30 minutes, 20 of which must be actual time spent with the physician.
- Comprehensive psychiatric examination: at least 40 minutes, 30 of which must be actual time spent with the physician/psychologist.
- Psychological examination: at least 60 minutes, 45 of which must be actual time spent with the psychologist. (Additional time may be required depending on types of psychological tests administered.)
- Speech-language evaluation: at least 60 minutes must be spent with the speech-language pathologist.
- All others must last at least 30 minutes, or in accordance with accepted medical practice, with prior approval by the OTDA.

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 (1) reported immediately to OTDA and (2) specified in the report. 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 an estimated 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 Section II. Statement of Work, 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 mandatory ancillary testing (specified in Appendix B) at the primary site on the same day as the exam:

- X-rays – X-ray equipment and table must accommodate the weight of 400 pounds
- 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 the DDD Fee Schedule 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. 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 S)

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 more than 7 days from the time the order is received. The Contractor shall contact the claimant by telephone and determine whether the claimant agrees to attend the appointment. If the claimant agrees, the contractor will: 1. Explain the necessary details of the appointment, including location, date and time, and 2. Explain that if the claimant does not attend the Consultative Exam appointment a determination may be made on their claim with information in the case file and it may be found that they are not disabled. In all cases, an appointment letter (see Appendix T) must immediately be sent to the claimant, and also a reminder call must be made within 2 days of the appointment date. For appointments scheduled 10 days or more in the future follow G.14. 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 adjusted 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 OTDA approval. No appointments can be scheduled for evening hours unless prior approval is given by OTDA. Note: Successful claimant and third party telephone contact is speaking directly with the claimant or third party. Leaving a message on voicemail is not considered a successful attempt.
- G.4. Optional Ophthalmology 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 OTDA 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 3rd party vendor so that the 3rd 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. When requested, Contractor will issue mass transit fares to claimants for travel reimbursement. Up to 13% of claimants in the Brooklyn borough receive mass transit fares, averaging 1.4 mass transit fares for each exam. **All costs associated with mass transit fares must be included in your cost proposal and rates proposed cannot exceed the DDD fee schedule rates located in Appendix N.** The contractor is required to submit an annual report of mass transit fare usage.
- 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 and pamphlets shall be sent to the claimants, authorized representatives and designated third parties, by the Contractor, in a format designated by OTDA (see Appendix T).

The personalized claimant appointment letter must contain the following information:

- a. Why we need the CE and why we may need additional tests;
- b. Who the notice is from;
- c. A statement that the Social Security Administration will pay for the appointment;
- d. The date, time, type of CE appointment, the name, address, and telephone number of the CE provider;

- e. Instructions for responding to the notice, including a request that the claimant respond immediately if he or she cannot attend the CE appointment or if the claimant's treating source tells him or her not to attend the CE appointment;
- f. A reminder the claimant must bring all current medication in their original containers, along with any other medical aids (e.g., hearing aid(s) or eyeglasses) to the CE appointment;
- g. A request for the claimant to notify us if he or she needs travel assistance;
- h. An explanation that we will send a copy of the CE report to the claimant's treating source if we receive the claimant's written authorization;
- i. A request for the claimant to notify us if he or she needs an interpreter;
- j. A request that the claimant and any accompanying adult bring government issued photo identification to the CE appointment;
- k. If claimant is a child under the age of 18 include this language in the letter – All claimants under the age of 18 must be accompanied by a custodial parent or other authorized and documented adult who is familiar with the child's condition(s).
- l. Close out language stating: If you do not attend your appointment, we may make a decision based on the evidence we already have in your file. We may find that you are not eligible or no longer eligible for disability benefits; and
- m. Enclose with the letter any CE leaflets or attachments requested by OTDA.

The Contractor shall retain a copy for their records for 12 months. 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 within 1 business day after each action. At OTDA's request, the contractor will send copies of the personalized claimant letter to OTDA. See Appendix T for examples and Appendix S for "Instructions for Completion and Transmission of the Consultative Examination (CE) Appointment History Form, DDD-4184".

- G.7. The Contractor must verify the claimant's and any accompanying adult'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. If the claimant or accompanying adult does not have any identification, the contractor must contact the appropriate OTDA Medical Relations Officer. 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 (using the procedure described in G.3) 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 any appointment is missed (via the DDD-4184). There will be no payment for missed or cancelled appointments, lateness for appointment or discontinued examinations. Historically, "no show" rates are highest for psychiatric 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 3rd appointment. Upon receipt of the 3rd appointment request:
 - a) The contractor must attempt telephone contact with the claimant (2 attempts on 2 different days at 2 different times) to schedule the CE appointment.
 - b) The third appointment must be scheduled at least 10 days into the future.
 - c) After scheduling appointment with the claimant, send the claimant appointment letter and send notification to OTDA (see Appendix T).
 - d) If the claimant does not have a telephone or you did not reach the claimant by

telephone, send a call-in letter. The call-in letter:

- must be sent on the same day as, or after, 2nd unsuccessful call attempt;
 - must be sent no fewer than 10 days prior to scheduled exam;
 - must contain examination details as those noted in the claimant appointment letter (see G.6); and
 - must contain the following statement: If you do not respond within ten (10) calendar days after the date of this letter, a determination may be made based on information in your case file and it may be found that you are not eligible or no longer eligible for disability benefits.
- e) Send the 3rd appointment details to OTDA (See Appendix S (DDD-4184) and Appendix T).
- f) Send a reminder notice to the claimant as appropriate following G.14.
- g) If claimant does not call-in or attend the appointment, send response to OTDA (see Appendix S (DDD-4184) and Appendix T).

G.12. Contractor must be prepared to receive an electronic request that includes third party contact information. Upon receipt, contractor must contact third party by phone and/or by mail to request assistance in helping claimant manage the CE process. The contractor must notify OTDA (within 1 business day) of all contractor actions regarding contact or attempted contact with the third party. (See Appendix T).

- a) The contractor must attempt telephone contact with the third party (2 attempts on 2 different days at 2 different times). If the telephone contact is successful contractor is to provide the third party with the following information only:
1. Claimant has an appointment on this date, at this time, at this location.
 2. Claimant has indicated that you are someone who can assist them.
 3. If possible, please assist this claimant to attend this appointment.
- No further details of personal information should be provided to the third party.

b) If telephone contact is unsuccessful, send the third party a letter with the information found in G.12 a 1, 2 and 3.

G.13. Contractor must be able to upload TIFF images and structured data throughout the life of a CE order documenting significant order events as required by OTDA, including claimant contacts, third party contacts, reminder notices and appointment status. These significant order events are documented using the DDD-4184 and TIFF images and should be uploaded to OTDA within 1 business day of any significant order event. (See Appendix S (DDD-4184) and Appendix T). As needed, OTDA will give guidance in terms of the presentation of TIFF images and clarification regarding significant order events. OTDA reserves the right to make changes to forms and TIFF images throughout the life of the contract.

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. Reports must be received by OTDA no later than 5 days after the examination. 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. If OTDA requests a third appointment be made, processing time must not exceed 30 days from the date the order is received electronically by the Contractor to the delivery of the report to OTDA.

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 site that is located in the borough or county served (Brooklyn respectively) and be within reasonable walking distance of public transportation, which in turn, provides good access throughout the borough and/or county. Accessibility is a key consideration in the technical evaluation process. **All worksite locations performing services** under the contract must be approved by OTDA.
- 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. For this site a minimum of 60 seats are required. 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 must be a minimum number of eight (8) examining rooms at the proposed primary site.
- 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 number of three 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** paper copies of the technical proposal (**two proposals marked "Original" containing original 4095 Consultant Enrollment forms and 4 copies**) and two electronic copies on CD in Microsoft Office Word Document (.doc or .docx) format must be submitted according to the following outline and include each of the items specified. The CD may contain files in other formats such as TIFF, Excel and PDF for items such as sample EKG's, PFT's or other documents that are not generally created in Word.

In the event there is a discrepancy between the information in the paper copy of the proposal and the electronic copy of the proposal, the paper copy of the proposal controls.

A letter of transmittal (including email address and fax number) addressed to Ms. Kathleen Meerwarth (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, that all 4095 Consultant Enrollment forms were completed by each physician proposed to perform the work specified in this RFP in accordance with Section II. Statement of Work of the RFP, and that no changes or modifications to the completed 4095 forms have been made by any other individual;
- b. that the Offeror has not acted in collusion with any other prospective Offeror or competitor in preparing its proposal or responding to this RFP;
- c. that the Offeror has not disclosed its pricing which is included in the financial proposal (Appendix B) submitted in response to this RFP;
- d. that the Offeror has not acted to restrict competition in responding to this RFP;
- e. specify any planned subcontractors;
- f. that the Offeror is willing and able to undertake the performance of all services required by this RFP;
- g. disclose any potential conflict of interest involving the Offeror or any planned major subcontractors. If there are none it shall be so stated;
- h. 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 F 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 G 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:
- Appearance: Describe in detail the appearance of the proposed examination facility. For example, rooms painted or wallpapered, floor carpeted or tile, etc. A site visit to the Offeror's facility may be required
 - Location: Address and location of the facility in relation to public transportation and a full description of how claimants will get to the facility using all modes of transportation. Include availability and quantity of claimant parking at the location site.
 - Facility Capacity: Provide floor plans identifying:
 - total facility square footage
 - specifically identify the purpose of each room including examination rooms
 - specific room dimensions including waiting room dimensions and seating capacity
 - identify equipment locations including hand-washing facilities
 - excess space capacity
 - Complete description of how proposed site meets each facility requirement specified in Section II. Statement of Work, H. Facility Requirements.
 - 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
 - If the Offeror is proposing a facility which requires any site renovations, a comprehensive renovation schedule must be included which documents the Offerors' ability to conclude required work by contract start-up.

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 H should be used for this information.)

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

3. **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 (and any backup staff that may be used) 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 license/registration 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. If an error is made in completing the required forms, a single line is to be drawn through the error. The correction is to be initialed by the physician. **DO NOT** use white out or other methods of covering mistakes. 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 V for the 4095 form and Appendix O for the Conditions Governing Referrals for Consultative Examinations.)
 - **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.
 - 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.
4. **Service Plan** - This section must describe how your firm plans to meet the service requirements specified in this RFP.
- A. Service plan 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 J 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;
 - 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;
 - Workplan for conducting training in performing CEs and preparing CE reports;
 - 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;
- B. Time Standards: Detailed plan of how processing time standards will be met as outlined in the RFP Section II. Statement of Work;

- C. Optional Services – Appendix K 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 K 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”.
5. **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 the name of the organization that services are provided for, the contact person with email address and phone number, the period of service performance and description of the work performed including volume or number of exams or evaluations within a 12-month period. 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.).
 - **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
 - Speech and Language
 - Resting EKG Tracings
 - Treadmill Exercise Test EKG Tracings
 - Spirometric Tracings Before and After Bronchodilators
- **If offering optional examination(s), submit a sample of completed report(s) in the prescribed format for these examinations.**
6. **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.
7. **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.
8. **Contractor/Subcontractor Background Questionnaire** – Each Offeror must complete the NYS-OTDA 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.

B. Financial Proposal - **Six** paper 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. Kathleen Meerwarth (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.

This is a five(5) year contract. Proposal must have pricing for all five (5) years at time of submission. All prices for mandatory and optional services are fixed for the first three (3) years of the contract term. Offeror may increase prices for both mandatory and optional services in years four (4) and five (5). Proposed rates for each year of the five year contract period cannot exceed the DDD's fee schedule rates in effect at the time the RFP is issued. DDD's fee schedule is included in Appendix N.

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. **Standard Response Forms** - Each Offeror must complete the following forms in Appendix E. All forms, except for ST-220-TD, become part of the financial proposal submitted to Ms. Kathleen Meerwarth (see address page 6).
 - MacBride Fair Employment Principles
 - Non-Collusive Bidding
 - Offeror's ID Form
 - NYS Vendor Responsibility Non-Construction For-Profit Questionnaire
<http://www.osc.state.ny.us/vendrep/index.htm>
 - Procurement Lobbying Act. Refer to web page
<http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>
for clarification of the Procurement Lobbying Law.
 - Offeror Disclosure of Prior Non-Responsibility Determinations
 - Certification regarding Drug Free Workplace Requirements
 - Security, Nondisclosure, Confidentiality and Press Releases Agreement
 - ST-220-CA Contractor Certification to Covered Agency
 - ST-220-TD Contractor Certification (Submit directly to NYS Tax Department)
5. **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. Kathleen Meerwarth (see address page 6).
6. **Financial Status** - 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. Proof of financial status and stability of your firm will be required. Offerors must demonstrate their financial stability and viability by submitting a current Dun and Bradstreet Comprehensive Report or a current Dun and Bradstreet Risk Management Report that has been prepared using Offeror information and not that of a parent corporation or other affiliated entity.

7. Encouraging Use of New York State Businesses in Contract Performance

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

The Contractor will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Offerors are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

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

Public Procurements can drive and improve the State's economic engine through promotion of the use of New York businesses. The State therefore expects Offerors to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

To demonstrate their commitment to the use of New York State Businesses, Offerors are required to submit the Subcontractor and Supplier Identification form located in Appendix Z of this RFP and submit it with their Proposal.

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 basis of the award under this RFP will be “best value”, meaning the selection will be based on the optimal combination of cost and technical scores. 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 found to be non-responsive, 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, Staffing, Service Plan and Responsiveness and Experience. A maximum of 100 points is available for the Technical Proposal (see Appendix U).

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 raw technical score for an Offeror. THE TOTAL RAW TECHNICAL SCORE FOR A PROPOSAL MUST BE A MINIMUM WEIGHT OF 70 POINTS 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 70 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 $Y = 85/90 * 100$
 $Y = 0.944444444 * 100$
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 sum totals quoted for mandatory services for the **total five years** of the contract. The total is calculated using the estimated volume for each service multiplied by the quoted price in the Offeror's proposal. 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 5 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>5 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 N.

SELECTION

To arrive at a Total Combined Score, the OTDA will combine the Offeror's Technical Score and Financial Score. Selection will be based upon an overall ranking of the proposals that pass each phase of the evaluation. Technical scores will account for 70% of the overall score. Financial scores will account for 30% of the overall score. 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. The Selection Committee will make a final recommendation to the OTDA's Commissioner that the Offeror with the highest overall point total of the Technical and Financial scores combined be tentatively selected for contract award subject to successful completion of contract negotiations. Again, the basis for selection shall be "best value". If two or more Offerors receive the same combined score, the Offeror with the higher Technical Score will be selected.

ADDITIONAL INFORMATION

- A. 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. The State Finance Law of the State of New York, Section 112, requires that any contract made by a State department which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The parties recognize that the Agreement is not wholly executed until and unless approved by the Comptroller of the State of New York.

The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York. Additionally, no cost will be incurred by OTDA for the Contractor's participation in any pre-contract award activity.

The Agreement constitutes the entire agreement between the parties with respect to the subject matter; all other prior agreements, representations, statements, negotiations and undertakings are superseded hereby. The terms, provisions, representations and warranties contained in the Agreement shall survive performance hereunder. It is understood that unless the context clearly indicates otherwise, all references herein to the Agreement shall be deemed to include the Exhibits and Appendices attached hereto.

OTDA and the Contractor acknowledge and agree that time is of the essence in the Contractor's performance hereunder, when and if it is specifically stipulated.

2. Performance under the Contract shall commence January 5, 2016 or upon approval by the New York State Comptroller if later than January 5, 2016, and end on January 4, 2021. 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. OTDA may terminate this contract without incurring any termination costs at **any time** during the term of this contract. OTDA will monitor on an ongoing basis the Offeror's compliance with all contractual services. OTDA will notify the Offeror of any deficiencies noted during this review and the effect it will have on the continuation of the contract.

OTDA may terminate this contract without incurring any termination costs effective January 4, 2019, it shall give notice to the contract no later than January 4, 2018; the dates specified in this sentence may be adjusted by mutual written agreement of the parties.

3. Contractor shall perform the services described herein through the use of its own employees, agents and subcontractors who shall be experienced in and qualified to perform said work and services; provided that the functions that may be subcontracted are administrative services, transcription services, laboratory services, radiology interpretation services, and the optional services listed in Appendix C. 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, subcontracted or assigned, either in whole or in part without prior written approval of the OTDA.
4. Contractor, staff and subcontractors must be in full compliance during 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 Articles 130 and 131 of the New York State Education Law, which regulate the admission to and practice of the professions, including medicine. All contractors and their agents 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 or entity 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, true and accurate.

The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.

The Contractor warrants and affirms that the terms of the Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under the Agreement.

5. Contractor will not knowingly use any individual or entity:
 - If he or she, or a family member 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, revoked or suspended (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.
6. Contractor shall perform all work on premises approved by OTDA.
7. Contractor shall be responsible for compensatory cost of laboratory specimens, examination and test results, and Office records lost while in the possession of Contractor.
8. 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, necessary conferences and meetings with OTDA or its representatives and any future OTDA requested data exchange modifications such as format of Data Transfer, Record Layout, Structured and Unstructured data, delivery schedules, etc.. All contract costs and expenses for these services must be recouped through the offer rates identified in Appendix B and C of this RFP.
9. New York State Contractor Insurance Requirements

Prior to the start of work the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York ("admitted" carriers) with an A.M. Best Company rating of "A-" or better or as acceptable to the OTDA. The OTDA may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the OTDA to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to the OTDA evidence of such policies in a form acceptable to the OTDA.

If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OTDA and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. OTDA may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require OTDA to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to OTDA evidence of such policies in a form acceptable to OTDA, in accordance with the requirements set forth in Appendix W New York State Contractor Insurance Requirements, as applicable.

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 within 48 hours. OTDA reserves the right to assign OTDA or contracted staff to 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. The OTDA reserves the sole discretion for the volume of work provided to Contractor pursuant to this Agreement, and makes no commitment to any specific minimum volume of work. 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 estimated.
15. The Contractor must extend these terms and conditions to any state agency in New York State. It must also extend these 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, military authority, acts of public enemy, wars, accidents, fire, explosions, earthquakes, flood, acts or omissions of public utilities or any other causes not reasonably foreseeable or beyond the control of a party hereinafter defined as "Force Majeure". 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. Standard Clauses for New York State Contracts (January 2014), attached hereto as Appendix A, is hereby fully incorporated into the Agreement.

The parties agree that the Contract shall be construed and interpreted in accordance with the Laws of the State of New York. The Contractor shall be required to bring any legal proceeding against OTDA arising from the Contract in New York State courts.

Should any provision of the Contract be declared or found to be illegal, unenforceable, ineffective, or void, then each party shall be relieved of any obligation arising from such provision; the balance of the Contract, if capable of performance, shall remain in full force and effect.

No term or provision of the Contract shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under the Contract shall not constitute consent to, a waiver of, or excuse of any other, different or subsequent breach.

19. 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.
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. 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, 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.

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

NEW YORK STATE LAW

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

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, OTDA hereby establishes an overall goal of 20% for MWBE participation, 10% for New York State certified minority-owned business enterprises ("MBE") participation and 10% for New York State certified women-owned business enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). Additionally, an overall goal of 10-20% is established for Equal Employment Opportunity ("EEO") participation. A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that OTDA may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how OTDA will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

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

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

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

the attached MWBE guidance, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A."

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

A MWBE Utilization Plan with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OTDA.

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

If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OTDA, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OTDA to be inadequate, OTDA shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

If a Bidder fails to submit a MWBE Utilization Plan;

If a Bidder fails to submit a written remedy to a notice of deficiency;

If a Bidder fails to submit a request for waiver; or

If OTDA determines that the Bidder has failed to document good faith efforts.

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

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

Equal Employment Opportunity Requirements

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

The Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form OTDA 4970, to OTDA with their bid or proposal.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Form OTDA 4934 - Staffing Plan) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization

Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting their contract manager.

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

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

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.

Contractor must utilize small business labor surplus areas where this can be done consistent with the efficient performance of the Contract.

25. OTDA reserves the right to direct operating changes to the contractor based on its own observations or based on suggestions made by the contractor; OTDA reserves the right to claim the full benefit of the cost savings accruing from such operating changes, but may elect to apportion up to 70% of the savings based on the contributions made by the contractor in identifying and implementing the operational changes.

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: Division of Disability Determinations
Director of Budget and Finance
Address: One Commerce Plaza
Albany, NY 12210
Telephone Number: 518-626-3042
Facsimile Number: 518-626-3012
E-Mail Address: 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.

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, agent or subcontractor to perform duties under the terms of this Agreement, the Contractor will conduct a criminal history/security background check on all such persons. The Contractor shall determine the method and frequency by which it conducts and confirms the fitness of its employees (employee shall also mean agents and subcontractors) 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 an employee or agent pursuant to the Contractor's approved comprehensive plan for the conduct of criminal history/security background checks.

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 A or B of this section, 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

Contractor hereby agrees that all documents furnished by Contractor shall be subject to public disclosure by the OTDA in the normal course of business in accordance with the requirements of the Public Officers Law, Article 6, except for proprietary information the disclosure of which would cause substantial injury to the competitive position of Contractor's enterprise. Information relating to Contractor price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to Contractor. Contractor may otherwise preserve proprietary rights as to confidential or business process information in accordance with procedures established under applicable State laws (see Public Officers Law section 89 (5)), provided that (i) Contractor shall inform State prior to or with submission of its bid, in writing, that such records are being furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor shall state the reasons with specificity why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by OTDA.

L. All Contractor or Subcontractor staff performing under this Contract must commit to and sign a Non-Disclosure Agreement, attached herewith in Appendix P, "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. Interpretations and Disputes:
 - A. This provision shall apply to any dispute of the parties relating to performance under the Agreement except performance related to 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"). All documents submitted as part of this dispute provision may be sent either by surface mail, by carrier, or electronically to the Director, Bureau of Contract Management, 40 North Pearl Street, 12th Floor Section D, Albany, NY 12243.
 - B. Within thirty (30) 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 (30) days to make its submission; the submission may include any material the Contractor deems relevant to the dispute.
 - C. The Advocate will have a right to submit a response to the Contractor's submission. The response must be limited to evidence and arguments raised by the Contractor in its most recent submission and must be submitted within fifteen (15) days of receipt of the Contractor's submission. If the Advocate submits a rebuttal, the Contractor will have thirty (30) 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 rebuttal by the Advocate shall generate a right of response by the Contractor until such time as the Designee has received the Contractor's submission and deems the submission process complete or the Contractor fails to submit a response within thirty (30) days as required.
 - 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/she 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 OTDA Counsel, and (d) prepare a response to the dispute either ratifying, modifying, or reversing the recommended decision. The Director's final written decision will be rendered within forty-five (45) days of the date when the submission process is deemed complete.
 - F. A copy of the Director's final written 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 the OTDA, will be issued to both parties. The Director's final written decision shall be deemed a final and conclusive agency decision unless a written notice of appeal is received no more than fifteen (15) calendar days after the date the Director's final written decision is received by the Contractor. Such notice of appeal must be filed with the General Counsel of the OTDA.
 - G. The General Counsel of the OTDA or his/her 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 Director's final written

decision. The General Counsel's final decision will be rendered within thirty (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 the General Counsel's decision is not made within ninety (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 the 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 the OTDA or the State of New York in the Supreme Court of the State of New York in the County of Albany or the New York State of Claims.

33. Contractor must maintain all data related to CE requests in a secure and confidential manner, regardless of format, through all stages of CE request handling, including: retrieval of CE requests from OTDA, managing of requests throughout all stages of processing (including retrieving, scheduling, examination, report preparation, report signature and storing), delivery of all required processing data (including request receipt confirmation, appointment and contact information, appointment kept status, etc.), and delivery of completed CE reports. All stages of the Contractor's CE request handling, and steps to secure related data throughout the entire process, must be clearly articulated by the Contractor and approved by OTDA.

Contractor shall make every reasonable effort to safeguard equipment, files or documents containing personally identifiable information (PII) in relation to CE requests processed on behalf of OTDA. Contractor must ensure that computers, laptops and other electronic devices/media used in processing CE requests are encrypted and password protected. Encryption and password standards must be preapproved by OTDA.

The Contractor and its subcontractors are responsible for safeguarding Personally Identifiable Information (PII) and must report any loss within one hour of discovery 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 or subcontractors involved in processing reports shall disclose to any third party 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. 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. Electronic records must be definitively destroyed in a similar manner that prevents reconstruction as well.
35. The Contract may be terminated in whole or in part subject to the following 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. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OTDA officials or staff, the Contract may be terminated by the Commissioner of OTDA or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OTDA or his or her designee to be non-responsible. In such event, the Commissioner of OTDA or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
- D. 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.
- E. OTDA reserves the right to terminate the Contract should the Contractor fail to substantially meet all Federal, New York State, and/or Local regulations.
- F. Should Federal or State funds for this Contract become unavailable, OTDA shall deem this Contract terminated immediately without termination costs.
- G. Notwithstanding the foregoing termination provisions in paragraphs 35A through 35F 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.
- H. Should the Agreement 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 Agreement. The Contractor agrees not to seek any punitive damages, compensation for any lost or anticipated profits or any other additional compensation or redress as a result of any such event.
- I. 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.
- J. 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.
- K. 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.

- L. 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.
 - 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 this Paragraph. For any suit, action, claim, damages or costs arising under or connected to the title, patent and copyright, or other intellectual property 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. Payments to the Contractor shall be based on the prices and/or rates set forth in the, The Cost Proposal Rate Form, submitted in the Offeror's Financial Proposal. Invoicing will be submitted by the Contractor to OTDA in arrears for services rendered under this Agreement.

OTDA will make best efforts to process all vouchers within thirty (30) days of their receipt, however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by such law.

OTDA shall not be liable for the payment of any taxes under the Agreement however designated, levied or imposed.

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, by email at 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 Comptroller's electronic payment procedures, except where OTDA has expressly authorized payment by paper check as set forth herein.

Contractor shall provide complete and accurate billing invoices to the OTDA in order to receive payment. Billing invoices submitted to the OTDA must contain all information and supporting documentation required by the Contract, the OTDA and the state Comptroller. 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 http://osc.state.ny.us/vendor_management/forms.htm.

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 OTDA provides the CE provider with notice of exam cancellation prior to the exam date, yet the provider conducts the exam anyway, no payment will be made. In addition to other standard forms of notification, cancellation information posted by OTDA in a Provider Directory on the DDD Web Server prior to the exam date will count as timely notification, even if the CE Provider fails to process the posted information. OTDA's Medical Relations Officer may authorize payment if, in their judgment, extenuating circumstances so permit.

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 and no payment will be made. OTDA's Medical Relations' Officer may authorize payment if, in their judgment, extenuating circumstances so permit.

If 150 days elapse from the date of CE order and no report and voucher has been received by OTDA, the consultative examination and voucher will be deemed cancelled and no payment will

be made. OTDA's Medical Relations' Officer may authorize payment if, in their judgment, extenuating circumstances so permit.

Any disputed or unresolved payment issue must be brought to the attention of OTDA within one calendar year of the date of service in order to receive consideration by OTDA. OTDA's Medical Relations' Officer may consider a payment issue brought to OTDA's attention after the one year period if, in their judgment, extenuating circumstances so permit.

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 additional material 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

Section 163 of the State Finance Law requires that contracts be awarded on the basis of lowest price or best value to a responsive and responsible Bidder. The State and courts have determined that responsibility includes integrity, previous performance, legal authority to do business in New York State, and financial and organizational ability to perform the Contract. As part of the procurement process, Bidder, affiliates and any business entity of which the Bidder is a subsidiary and Subcontractors (where the Subcontractor is known at the time of the Contract award, its qualifications are a material factor in the award, and its subcontract will equal or exceed \$100,000 over the life of the Contract) are required to complete the NYS Vendor Responsibility Non-Construction For-Profit Questionnaire and submit it with its Proposal. The OTDA shall conduct reviews of each Bidder for purposes of making a "responsibility" determination. The OTDA may request additional information, including meeting with the Bidder. If the Bidder is determined by the OTDA to be non-responsible, the OTDA shall inform the Bidder of such ruling. The Bidder shall have thirty (30) days to request a meeting with the OTDA to explain the ruling and to demonstrate the finding to be incorrect or to correct/resolve any issues impacting the Bidder's

responsibility. If the OTDA's finding remains unchanged after meeting with the Bidder, the Bidder shall be removed from consideration for this Contract. The Bidder that is awarded this Contract shall update its NYS Vendor Responsibility Non-Construction For-Profit Questionnaire whenever such information changes and prior to any Contract extensions and/or amendments. If the Bidder is determined, on the basis of new or previously undisclosed information, to be non-responsible, the Contract may be terminated, at the OTDA's sole discretion.

The OTDA 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 or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

For direct VendRep System user assistance, the OSC's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.ny.gov. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website <https://portal.osc.state.ny.us> or may contact the OTDA or the OSC's Help Desk for a copy of the paper form.

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of the OTDA or his or her designee, to present evidence of its continuing legal authority to do business in New York State, and demonstrate its integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of the OTDA or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of the OTDA or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency officials or staff, the Contract may be terminated by the Commissioner of the OTDA or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of the OTDA or his or her designee to be non-responsible. In such event, the Commissioner of the OTDA or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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. Iran Divestment Act

By entering into this Contract, Contractor certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before the OTDA may approve a request for Assignment of Contract.

During the term of the Contract, should the OTDA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the OTDA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the OTDA shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default. The OTDA reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

48. The parties agree to be bound by the additional terms contained in Appendix A which is attached hereto and made a part hereof.