



**Office for People With
Developmental Disabilities**

Request For Applications

**CAREER-SPECIFIC VOCATIONAL TRAINING
VERSION 2**

December 21, 2022



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1. INTRODUCTION

1.1. Purpose

- 1.1.1. The Office for People With Developmental Disabilities (“OPWDD”) is issuing this *Career-Specific Vocational Training Request for Applications (RFA)* for the purpose of awarding one (1) or more contracts for the provision of career-specific vocational training for individuals with intellectual and developmental disabilities (I/DD). This population is significantly under-represented in the general workforce. Additionally, as a result of the pandemic, the number of unemployed individuals in OPWDD’s supported employment services has doubled. Of the 16,000 people receiving employment and vocational services, 3,000 individuals in Supported Employment (SEMP) are unemployed and 4,000 individuals are in vocational services that prepare individuals for competitive employment.
- 1.1.2. While OPWDD offers a continuum of employment and vocational services, there is no existing funding for career-specific vocational training within OPWDD. Governor Hochul has recognized this challenge in the 2022 State of the State address and has allocated more than \$2 million to OPWDD for Fiscal Year (FY) 22-23 to develop and deliver career-specific vocational training to individuals with I/DD.
- 1.1.3. The combination of the career-specific vocational training developed and delivered through this grant and community vocational experiences funded through the Comprehensive Home and Community-Based Services (HCBS) (1915-c HCBS) Waiver will increase the marketable skills that individuals with I/DD need to meet the demands of today’s employers. Having career-specific skills and community vocational experiences are the key to employment success and increasing the number of individuals competitively employed.
- 1.1.4. The Lead Agency and Member Agencies may submit a proposal for more than one (1) career-specific vocational training, however, a separate application is required for each career.
- 1.1.5. In order to effectively and efficiently deliver this career-specific vocational training to a significant number of people with I/DD, OPWDD is encouraging Providers to work together as a group for the benefit of the individuals they serve.
- 1.1.6. If the Bidder is submitting a bid as a Group of Providers, there should be a Lead Provider that will receive payment from OPWDD and Member Providers. The Lead Provider (Bidder) will coordinate and may reimburse Member Agencies for services in either the development/adaptation or delivery of the career-specific training program if needed.
- 1.1.7. The ultimate goal of this funding is to assist the people with I/DD currently enrolled in the OPWDD service system obtain employment and significantly add to the 8,800 people in OPWDD Supported Employment (SEMP) currently working.
- 1.1.8. This RFA consists of this document as well as Appendices, Attachments, Exhibits and any Addenda to this RFA. Proposals must be completed by the Bidder and submitted in accordance with Sections 1.4 and 4 of this RFA.

1.2. Background

- 1.2.1. OPWDD is a New York State executive agency responsible for the provision, regulation and oversight of services to New Yorkers with developmental disabilities. Individuals receiving services funded by OPWDD must have approved eligibility for OPWDD Home and Community-Based Services (HCBS) Waiver services or state funded services. Developmental disabilities include but are not limited to intellectual disabilities, cerebral palsy, epilepsy, neurological impairments or autism spectrum disorders.

OPWDD provides services and supports directly and through a network of approximately 500 nonprofit service providing agencies, with about 80 percent of services provided by the private nonprofits and 20 percent provided by OPWDD directly.

- 1.2.2. New York State funding is being allocated across several state agencies to increase wages and benefits, and to connect job seekers to employment opportunities. This funding affords OPWDD the opportunity to provide career-specific training to individuals with intellectual and developmental disabilities who are seeking competitive employment in the career field of their choice.
- 1.2.3. For the purposes of this RFA, the terms Applicant and Bidder are general terms and are synonymous. The term Contractor refers to the Bidder that is awarded the Contract's grant funding. The term "Provider Agency" refers to a nonprofit (or not-for-profit) agency that is authorized to provide OPWDD services. Only an OPWDD Provider Agency or Group of OPWDD Provider Agencies are eligible to apply for this grant; however, if a Group of Provider Agencies applies, one Provider Agency must assume the role of "Lead Provider" and Applicant. If a Lead Provider reimburses any of the "Member Agencies" of the group, the Member Agencies will be considered "subcontractors" and will be subject to the terms and conditions of this RFA and the awarded Contract. The Lead Provider will be the Contractor that receives the funding from OPWDD and is responsible for Contract performance.

1.3. Minimum Qualifications

- 1.3.1. The minimum qualifications that must be met for an Applicant to be considered for evaluation under this RFA are as follows:
- 1.3.2. Must be a Not for Profit (NFP) organization authorized to do business in New York (including NFP corporations formed under New York State Law, local government units, or organizations created by an act of the New York State Legislature for charitable purposes which include providing services to persons with developmental disabilities).
- 1.3.3. Must be authorized in their OPWDD Operating Certificate to provide Home and Community-Based Services (HCBS) through the OPWDD Medicaid Waiver. [Home and Community Based Services Waiver | Office for People With Developmental Disabilities \(ny.gov\)](https://www.opwdd.ny.gov/home-and-community-based-services-waiver)
- 1.3.4. The Lead Provider Agency and all Member Agencies of a Group of Providers must not be on OPWDD's Early Alert list at the time the application is submitted.

- 1.3.5. The Lead Provider Agency must be current on the submission of Consolidated Fiscal Reports (CFRs) at the time the application is submitted. The Lead Provider Agency must provide the most recent CFR schedule 2A for the purpose of demonstrating overall financial viability. Applicants may be asked to provide an interim CFR, including CFR schedule 2A, and interim financial statements.
- 1.3.6. The Lead Provider Agency must be registered in Grants Gateway with Prequalified Status.
- 1.3.6.1. In addition to Grants Gateway registration, Lead Provider Agency applicants must be Prequalified at the time and date that the application is due. Grant proposals received from NFP applicants that are not Prequalified in the Grants Gateway at the application due date and time will not be evaluated. Such proposals will be disqualified from further consideration.
- 1.3.6.2. For more information about Grants Gateway and Prequalification, please visit the Grants Gateway website <https://grantsmanagement.ny.gov/get-prequalified> or contact the Grants Gateway Team at Grantsgateway@its.ny.gov. The Grants Gateway help desk can be reached at (518) 474-5595.
- 1.3.6.3. In keeping with this requirement, any application from a non-governmental NFP which has a status other than one of the following at the time and date that the application is due shall not be considered eligible for this procurement:
- Document Vault Prequalified;
 - Document Vault Prequalified Open;
 - Document Vault Prequalified/In review; or
 - Document Vault Open for PQS Edits
- 1.3.6.4. See Section 1.11 of this RFA for additional information pertaining to prequalification.
- 1.3.7. The Lead Provider Agency and all Member Agencies of the Group of Providers will apply with one (1) RFA application by region for each career-specific vocational training. However, one (1) Provider Agency must be the contract and grant management lead administrator and, therefore, prequalified in Grants Gateway. The region will be defined by the Lead Provider Agency's OPWDD region. Members of the provider group do not need to be from the same OPWDD region; however, they must be located close enough to the training location to effectively and efficiently send individuals to the training program.
- 1.3.8. The Lead Provider Agency and all Member Agencies of the Group of Providers must be authorized in their OPWDD Operating Certificate by OPWDD to provide the following HCBS Waiver services (at a minimum): Prevocational Services, Pathway to Employment, and Supported Employment (SEMP).

1.4. Calendar of Events

Event	Date
RFA Release Date	Friday, December 2, 2022
Pre-Bid Conference	10:00am, Monday, December 12, 2022
Deadline for Submission of Questions	Thursday, December 15, 2022
Notice of Intent to Bid or Not to Bid	
Issuance of Response to Questions	Wednesday, December 21, 2022 Monday, December 19, 2022
Application Due Date	11:00am, Thursday, February 2, 2023
Anticipated Notification of Tentative Award	Thursday, February 16, 2023
Anticipated Contract Start Date	Friday, March 17, 2023

NOTE: The above dates are tentative and subject to change at OPWDD's sole discretion.

1.5. Term of Contract

OPWDD will enter into a contract with responsive and responsible vendors as a result of this RFA. The term of the contract resulting from this procurement will ~~be four (4) years~~ span four (4) state fiscal years with an anticipated start date of March 17, 2023 and end date of March 31, 2026.

1.6. Designated Contact

- 1.6.1. Pursuant to State Finance Law § 139-j(3)(a), OPWDD identifies the following allowable contact for communications related to the submission of questions and intention to participate, proposals and debriefings.

Alexander Rosney
Contract Management Unit
NYS Office for People With Developmental Disabilities
44 Holland Ave, 5th Floor
Albany, NY 12229
OPWDDGrants@opwdd.ny.gov

- 1.6.2. Contacts with Employees

Bidders may not approach OPWDD personnel with offers of employment during the procurement period. Any Bidder who is aware of an OPWDD employee who is considering employment with the Bidder must advise Connie Blais via e-mail forthwith (see Section 1.6 for contact information).

1.7. Questions from Bidders

- 1.7.1. Questions from Bidders regarding this RFA must be received by OPWDD in accordance with the Deadline for Submission of Questions included in the Calendar of Events, Section 1.4 of this RFA.

- 1.7.1.1. All questions must be submitted via electronic mail to OPWDDGrants@opwdd.ny.gov to the appropriate contact as stipulated in Section 1.6 of this RFA.
- 1.7.1.2. Questions must be submitted on the Attachment 14: OPWDD Questions Submittal Form, available at [Attachment 14 Question Submission Form \(ny.gov\)](#).
- 1.7.1.3. Each question must, to the degree possible, cite the specific RFA section to which it refers.
- 1.7.1.4. OPWDD reserves the right to not answer questions that are not directly related to this RFA.
- 1.7.2. STF §§139-j and 139-k impose certain restrictions on communication between NYS and Bidders during a procurement. Additional information is available at <http://www.ogs.ny.gov/acpl>.
- 1.7.3. Bidders are cautioned that any question or inquiry regarding the RFA must be written in generic terms and must not contain pricing information. The inclusion of specific information about a Bidder's cost proposal in an inquiry may result in the Bidder's disqualification.
- 1.7.4. All questions, clarifications, bid deviations and/or extraneous terms concerning this RFA must be submitted in writing by the Deadline for Submission of Questions as stated in the Calendar of Events (Section 1.4 of this RFA). Any bid deviations or extraneous terms of a substantial nature must be resolved prior to the submission of a bid.
- 1.7.5. Bidders must identify, during the question-and-answer period, any terms and conditions in the RFA that would prohibit a Bidder from submitting a proposal. This process may not be used to negotiate material changes to the terms and conditions set forth in the RFA; any such changes will not be accepted by OPWDD.
- 1.7.6. If the Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFA, the Bidder shall immediately notify OPWDD of such error in writing to the designated contact(s) identified in Section 1.6 of this RFA. If, prior to the Application Due Date as specified in Section 1.4 of this RFA, a Bidder fails to notify OPWDD of a known error or an error that reasonably should have been known, the Bidder shall assume the risk of proposing. If awarded the contract, the Bidder shall not be entitled to additional compensation by reason of the error or its correction. Prior to the Application Due Date, any such clarifications or modifications deemed necessary by OPWDD will be posted to the OPWDD website and the New York State Contract Reporter website provided in Section 1.10 of this RFA.
- 1.8. Pre-Bid Conference**
 - 1.8.1. Bidders are encouraged to attend the Pre-Bid Conference via WebEx as scheduled in Section 1.4 of this RFA.
 - 1.8.2. The WebEx will provide important information to organizations interested in submitting applications in response to this RFA.
 - 1.8.3. The goal of the conference will be to provide an overview of the RFA, to respond to any questions that may have been received prior to the pre-bid conference, and to answer additional questions

stated during the WebEx. Questions and answers reviewed and discussed at the conference will be included with the responses to questions from Bidders as noted in Section 1.7.

- 1.8.4. Attendance is not required but is encouraged, as OPWDD will review important proposal submission requirements. WebEx access information will be posted prior to the conference on the sites referenced in Section 1.10.

1.9. Notice of Intent to Bid or Not to Bid

All vendors are requested to submit the Notice of Intent to Bid or Not to Bid, **Attachment 15** available at [attachment-15-notice-of-intent-to-bid-or-not-to-bid.pdf \(ny.gov\)](#), in response to this RFA.

- 1.9.1. A Notice of Intent to Bid is not mandatory. Bidders will be eligible to submit an application if the Bidder does not submit this form.
- 1.9.2. Submitting this form does not obligate vendors to submit a proposal in response to the RFA.
- 1.9.3. The Notice of Intent includes space for vendors to explain why a proposal is not being submitted. A no-bid response will not impact participation in future solicitations. The explanations given for no-bid replies will help OPWDD demonstrate that proposals were shared with vendors in addition to those responding to this RFA and to understand why a vendor did not bid.
- 1.9.4. Please submit **Attachment 15** by emailing the designated contact provided in Section 1.6 of this RFA on or before the Deadline for Submission of Questions and Intent to Bid due date as indicated in Section 1.4 of this RFA.

1.10. Announcements and Amendments to the RFA

- 1.10.1. OPWDD utilizes its procurement webpage and the NYS Contract Reporter for the purpose of disseminating information relating to this procurement. OPWDD will post its official answers to Bidder questions and any changes to the RFA resulting from such questions on these sites on or before the Issuance of Response to Questions date as indicated in the Calendar of Events, Section 1.4. Bidders are encouraged to monitor these sites at [Procurement Opportunities | Office for People With Developmental Disabilities \(ny.gov\)](#) and [https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In \(ny.gov\)](https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In (ny.gov)).
- 1.10.2. OPWDD's responses to questions and notification of amendments to the RFA, if any, will be in the form of a formal addendum which will be annexed to and become part of this RFA and any ensuing contract.
- 1.10.3. The Bidder must indicate on the form, **Attachment 1: Attestations / Checklist (Administrative Proposal Submission)** of this RFA, that the Bidder has reviewed and understands each addendum.

1.11. Grants Gateway

PLEASE NOTE: Applicants must enter "\$1" in the Other Expenditure Line of the Budget Properties tab in the Grants Gateway Application. Contract Total must not be entered.

- 1.11.1. Applications responding to this RFA must be submitted in the New York State Grants Gateway.
- 1.11.2. Detailed instructions are available at <https://grantsmanagement.ny.gov/resources-grant-applicants> for meeting and completing the following requirements:
 - 1.11.2.1. Registering your organization
 - 1.11.2.2. Getting Prequalified
 - 1.11.2.3. Applying for a Grant
 - 1.11.2.4. Managing Contracts
- 1.11.3. Help Desk
- 1.11.4. In addition to the support resources available to Grants Gateway users such as manuals, videos, webinars, and FAQs, Grants Management provides live help desk support for Grants Gateway users.

Hours: Monday – Friday 8:00 a.m. to 4:00 p.m.
Phone: (518) 474-5595
Email: grantsgateway@its.ny.gov
- 1.11.5. An after-hours support desk is available weekdays between 4:00 p.m. and 8:00 p.m. for account lockouts and basic questions at (800) 820-1890 or helpdesk@agatesoftware.com.
- 1.11.6. Once the application is complete, prospective grantees are strongly encouraged to submit their applications at least 48 hours prior to the due date and time. This will allow sufficient opportunity for the Applicant to obtain assistance and take corrective action should there be a technical issue with the submission process. Both OPWDD and Grants Management staff are available to answer Applicant's technical questions and provide technical assistance prior to the application due date and time. Contact information for the Grants Management Team is available under Section 1.11 of this RFA.
- 1.11.7. PLEASE NOTE: Although OPWDD and the Grants Management staff will do their best to address concerns that are identified less than 48 hours prior to the due date and time, there is no guarantee that they will be resolved in time for the application to be submitted and, therefore, considered for funding.
- 1.11.8. The Grants Gateway will always notify Applicants of successful submission. If a prospective grantee does not get a successful submission message assigning their application a unique ID number, it has not successfully submitted an application. During the application process, please pay particular attention to the following:
- 1.11.9. Not-for-profit Applicants must be prequalified on the due date for this application submission. Be sure to maintain prequalification status between funding opportunities. Three of a not-for-profit's essential financial documents - the IRS990, Financial Statement and Charities Bureau filing - expire on an annual basis. If these documents are allowed to expire, the not-for-profit's prequalification status expires as well, and it will not be eligible for State grant funding until its documentation is updated and approved, and prequalified status is reinstated.

- 1.11.10. Only individuals with the roles “Grantee Contract Signatory” or “Grantee System Administrator” can submit an application.
- 1.11.11. Prior to submission, the system will automatically initiate a global error checking process to protect against incomplete applications. An Applicant may need to attend to certain parts of the application prior to being able to submit the application successfully. You can also run the global error check at any time in the application process. (see p.68 of the Grants Gateway: Vendor User Guide).
- 1.11.12. Grantees should use numbers, letters and underscores when naming their uploaded files. There cannot be any special characters in the uploaded file name. Also, be aware of the restriction on file size (10 MB) when uploading documents.
- 1.11.13. The following table will provide a snapshot of which roles are allowed to Initiate, Complete, and Submit the Grant Application(s) in the Grants Gateway.

Role	Create and Maintain User Roles	Initiate Application	Complete Application	Submit Application	Only View the Application
Delegated Admin	X				
Grantee		X	X		
Grantee Contract Signatory		X	X	X	
Grantee Payment Signatory		X	X		
Grantee System Administrator		X	X	X	
Grantee View Only					X

2. SCOPE OF WORK

2.1. Overview

- 2.1.1. OPWDD is seeking HCBS Waiver service Providers/Group of Providers who are committed to offering individuals with I/DD a full continuum of day, vocational, and employment services to seamlessly provide individuals with high quality services that best meet their needs. Individuals need an opportunity not only to gain skills, but to have experiences that will help them set career and vocational goals. All Providers or Group of Providers must be committed to expanding services to offer the full continuum if not currently offered. The full continuum of vocational and employment services includes:
- 2.1.1.1. Prevocational Services that offer multiple community vocational experiences, employment-related training and assessment to determine the person's interests and skills. Prevocational services are HCBS Waiver funded;
 - 2.1.1.2. Pathway to Employment which is designed to develop an individualized career, vocational, and transition plan by offering community vocational experiences, job readiness training and assessment. Pathway to Employment services are HCBS Waiver funded; and
 - 2.1.1.3. Supported Employment (SEMP) which helps individuals obtain and retain a job that matches their skills and abilities and provides needed supports to be successful at the job. The Employment Training Program (ETP) is funded by SEMP to provide SEMP services for individuals seeking employment. ETP services include discovery, career planning, job development and job coaching. When a job is secured, ETP will pay the wages during the initial training period. Then the business will hire the person directly, after the initial training period when they become competent in the job duties. ETP wages are state-funded and the SEMP services are HCBS Waiver or state funded (for individuals grandfathered prior to 2015).
- 2.1.2. Because OPWDD Supported Employment Providers have first-hand knowledge of the career interests of the individuals they serve, skills that employers require, and the specific careers that are in demand locally or regionally, the Bidder(s) will choose the career area(s) for the development and delivery of the career-specific training.
- 2.1.3. Through this funding opportunity it is expected that OPWDD voluntary Providers will develop or adapt an existing career-specific vocational training that will prepare people with I/DD to obtain employment in the designated career. Currently, there are many career-specific vocational trainings that exist, however, the training programs need to be adapted so that people with I/DD can benefit from this in-person training and develop marketable employment skills. For example, more time and more individualized instruction for skill development may be needed, or training materials may need to be presented in multiple media to enhance understanding.
- 2.1.4. Bidders are encouraged to develop or adapt a training program in collaboration with businesses or schools that currently train people in vocational skills related to specific careers. Since voluntary Provider(s) know and understand the needs of the people with I/DD that they currently serve, it is expected that they could add this expertise to the development or adaptation.

- 2.1.5. The development/adaptation phase occurs during the current OPWDD FY 2022-2023 and the training program content will be prepared and submitted. The delivery of the training to people with I/DD will take place during the subsequent three fiscal years. All associated costs for the development and delivery must be included in the Provider(s) budget. **Please see Section 3.3. for instructions on submitting the Development Budget and Delivery Plan Budget.**

2.2. Quantity

- 2.2.1. OPWDD estimates that 1,500 people statewide will be trained over the course of the contracts awarded.
- 2.2.2. There will be one (1) type of career-specific vocational training contract per region. Career-specific trainings will not be duplicated in each region. Each region may provide more than one type of training. For example, OPWDD will not award multiple janitorial training in the same region. The region will be defined by the Lead Provider Agency's OPWDD region. Members of the provider group do not need to be from the same OPWDD region; however, they must be located close enough to the training location to effectively and efficiently send individuals to the training program.
- 2.2.3. OPWDD Regional Offices Map is located at the following link:
<https://opwdd.ny.gov/system/files/documents/2022/06/5-regional-offices-detailed-map.pdf>

2.3. Eligibility for Services

- 2.3.1. Participants in the career-specific vocational training program must be enrolled in at least one of the following: HCBS Prevocational Services, HCBS Pathway to Employment, HCBS Supported Employment (SEMP), the Employment Training Program (ETP), or state-funded SEMP for FY 23/24. In FY 24/25, the career-specific vocational training program may accept any individual enrolled in any HCBS Waiver service or state-funded services who has a vocational and employment plan and will actively seek employment after completion of the training program.
- 2.3.2. Participants will be initially assessed by the Provider prior to the training to assure they can benefit from the career-specific vocational training. This will include an employment and vocational plan identifying the individual's desire/interest in this specific career training before it is delivered to them. The plan will also identify the other HCBS service(s) that can supplement and reinforce the skills acquired in this career-specific training. Priority should be given to individuals who have lost their job during the pandemic. Time spent completing this assessment may be an allowable service in Prevocational Services, Pathway to Employment, Supported Employment (SEMP), or Employment Training Program (ETP). A format will be provided to successful Bidders.

2.4. Program Requirements

2.4.1. Career-Specific Training Program Development

- 2.4.1.1. The Contractor (Lead Provider) shall adapt/design/develop an in-person, career-specific vocational training program meeting the following specifications:
- 2.4.1.1.1. A minimum of 50 people trained in FY23-24 and 75 individuals trained per year thereafter (per OPWDD region);
- 2.4.1.1.2. A career-specific vocational training program with a minimum of 75 hours and a maximum of 100 hours of training time;

- 2.4.1.1.3. A career-specific vocational training program designed to be delivered over a period of no longer than five (5) months; and
- 2.4.1.1.4. Individuals cannot participate in more than one Career-Specific Vocational Training without OPWDD prior approval.
- 2.4.1.1.5. Individuals attending will not be supported by HCBS Waiver staff during the classroom sessions.
- 2.4.1.2. The Contractor (Lead Provider) will work with other Provider Agencies (Member Providers) in order to ensure that a minimum of 50 people are trained in FY 23-24, and 75 individuals are trained each fiscal year thereafter. The Group of Provider Agencies will work together to coordinate the career-specific vocational training program and the related community experiences in HCBS Waiver services, such as but not limited to creating a liaison/coordination function.
- 2.4.1.3. The Lead Provider and each Member Provider shall have experience with producing OPWDD Discovery Reports and Career and Vocational Plans.
- 2.4.1.4. The Contractor (Lead Provider) shall enter into an agreement with the other Provider Agencies (Member Providers). The agreement, at a minimum, shall identify the parties, detail responsibilities for each party, and outline the project details.
- 2.4.1.5. The training program will provide focused training in one (1) career however, multiple separate bids are encouraged. Upon completion of the training, an individual will obtain marketable skills that will allow them to follow a career path in the career-specific vocational training provided by the Contractor.
- 2.4.1.6. The training program content will include, at a minimum:
 - 2.4.1.6.1. Skill training and practice related to the specific career;
 - 2.4.1.6.2. Safety in the career-specific workplace; and
 - 2.4.1.6.3. Communicating with supervisors and coworkers.
- 2.4.2. Career-Specific Training Program Delivery
 - 2.4.2.1. The Contractor (Lead Provider) will develop a process for selecting individuals for the training program. For example (but not limited to), the Contractor will first consider individuals already enrolled in SEMP and unemployed with a stated career interest in the training program or individuals with a completed discovery and a written career and vocational plan for the first delivery sessions. OPWDD will provide a format to evaluate individuals.
 - 2.4.2.2. The Contractor (Lead Provider) and Member Providers will work with each individual participant and the individual's Care Manager to facilitate enrollment in the OPWDD HCBS vocational and/or employment service(s) best suited to improve the outcome of competitive employment. The HCBS vocational service(s) will provide additional career planning, assessments and supplement job-related skills training and community vocational experiences related to the career-specific vocational training program.
 - 2.4.2.3. Prior to the completion of the training program, the Provider will review the initial employment and vocational plan and update the plan to include how the person will transition out of the training and potentially to competitive employment. A format will be provided to successful Bidders.

2.5. Timeline of Deliverables

March 17, 2023	Anticipated Contract Start Date
April 14, 2023	1. Contractor must submit a detailed Career-Specific Vocational Training Outline of the modules and topics for the Career-Specific Vocational Training Program expanding on the information included in the application for review and approval by OPWDD. 2. Contractor must submit a detailed Career-Specific Vocational Training Delivery Plan for OPWDD review and approval. (\$2.6 million total across regions and multiple career-specific trainings.)
May 15, 2023	OPWDD final approval of Career-Specific Vocational Training Program Outline and Delivery Plan.
June 1, 2023	Begin the implementation and delivery of OPWDD-reviewed and approved career-specific vocational training to individuals enrolled in HCBS Waiver vocational and employment programs with preference given to those enrolled in HCBS SEMP or state-funded SEMP who lost jobs during pandemic. (Approximately \$3 million total across regions.)
June 1, 2024-2026	Delivery of career-specific vocational training to any individual enrolled in any HCBS Waiver service and state-funded services. (Approximately \$8 million total across regions.)

2.6. Reporting Requirements

- 2.6.1.1. Quarterly Reports and/or class cohort reporting including narrative on progress. (OPWDD will provide a reporting form to successful Bidders.)
- 2.6.1.2. Quarterly Reports on the numbers and status of individuals in the training, the status of their volunteer/work experience, status of enrollment in HCBS Waiver services.
- 2.6.1.3. Outcome reporting on individuals obtaining competitive employment and tracking of progress. (OPWDD will provide a reporting form to track progress and employment outcomes for successful Bidders.)
- 2.6.1.4. Budget Reports, as required.
- 2.6.1.5. Quarterly conference calls with OPWDD Employment Unit.

3. PROPOSAL REQUIREMENTS

The Proposal submitted in response to this RFA must include three (3) separate proposals: an Administrative Proposal, a Technical Proposal and a Cost Proposal, as described in Sections 3.1 through 3.3 of this RFA.

PLEASE NOTE: The Attachment 2: Cost Proposal has been revised is now labeled, “**REVISED ATTACHMENT 2: COST PROPOSAL**”.

Applicants must use the REVISED ATTACHMENT 2: COST PROPOSAL provided in an email sent with the Responses to Questions, and has been uploaded to the [Procurement Opportunities | Office for People With Developmental Disabilities \(ny.gov\)](https://www.nyscr.ny.gov/login.cfm) and <https://www.nyscr.ny.gov/login.cfm> New York State Contract Reporter - Log In (ny.gov).

Applicants submitting the incorrect Cost Proposal will be disqualified.

3.1. Administrative Proposal

3.1.1. Attachment 1: Attestations / Checklist (Administrative Proposal Submission)

3.1.1.1. Bidder must complete the required attestations, agreements, warranties, and certifications contained in **Attachment 1** as a mandatory requirement of the Administrative Proposal Requirements.

3.1.1.2. **Attachment 1** is available in the Pre-Submissions Upload tab of the [Career-Specific Vocational Training Opportunity](#) in the Grants Gateway System. Attachment 1 must be signed by an individual from the Provider or Group of Providers who is authorized to contractually bind the successful Bidder. When completed, Bidders must upload **Attachment 1** to the Pre-Submission Uploads tab in its designated space provided. Please do not upload secured or password protected pdfs.

3.1.2. Proposal Requirements

Bidder must be willing to enter into a Contract in accordance with the terms of the RFA inclusive of all Appendices and Attachments, including the Questions and Answers and any Amendments and/or Addenda to this RFA, if the Bidder is selected for contract award.

3.1.3. Ownership of Work Product

OPWDD does not intend to take ownership of materials produced, created, improved, maintained, or conceived by the selected Bidder (includes individual or Groups of Provider Agencies) in the fulfillment of its obligations under the Contract resulting from this RFA (including but not limited to any software, curriculum, website creation and development, documentation, products, materials, advertising for television, radio, print, internet, or other media).

~~Bidder (includes individual or Groups of Provider Agencies) must indicate an understanding and acceptance that all materials produced, created, improved, maintained, or conceived by the selected Bidder for the OPWDD in the fulfillment of its obligations under the Contract (including but not limited to any software, curriculum, website creation and development, documentation, products, materials, advertising for television, radio, print, internet, or other media), and deliverables which result from services rendered by the selected Bidder to the OPWDD shall be turned over to the OPWDD within ninety (90) days of the expiration of the contract, or within~~

~~thirty (30) days of early termination of the Contract, at no additional cost to the OPWDD. OPWDD shall own all rights, title, and interest in said material.~~

3.1.4. Insurance Requirements

- 3.1.4.1. Insurer and insurance requirements are provided in **Appendix C** of this RFA. The selected Bidder(s) must comply with these requirements to remain responsible under the terms of the Contract.
- 3.1.4.2. Bidder must agree in **Attachment 1: Attestations / Checklist (Administrative Proposal Submission)** that, if awarded a contract under this solicitation, they will comply with the insurer and insurance requirements.
- 3.1.4.3. Prior to the start of work, the selected Bidder(s) shall procure at its sole cost and expense, and shall maintain in force at all times during the term of the Contract, policies of insurance as set forth in **Appendix C**, 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 OPWDD.
- 3.1.4.4. The OPWDD 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 OPWDD to accept insurance placed with a non-authorized carrier under any circumstances.
- 3.1.4.5. The selected Bidder(s) shall deliver to the OPWDD evidence of such policies in a form acceptable to the OPWDD.

3.1.5. HIPAA Agreement

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandates the compliance and confidentiality of all information and records included and related to the policies, procedures and records of a facility or site and any future rules and regulations of HIPAA. The Bidder/Contractor must have the ability to become HIPAA compliant and sign a Business Associate Agreement prior to the execution of the Contract. This agreement is included with this RFA as **Appendix D**.

3.1.6. Non-Collusive Bidding Requirement

In accordance with STF §139-d, if the Contract is awarded based upon the submission of bids, the Bidder must warrant, under penalty of perjury, that its proposal was arrived at independently and without collusion aimed at restricting competition. Each Bidder must further warrant that, at the time the Bidder submitted its proposal, an authorized and responsible person executed and delivered to OPWDD a Non-Collusive Bidding Certification on the Bidder’s behalf.

The **Attachment 3: Non-Collusive Bidding Certification** form must be completed and submitted with the Administrative proposal, and is available at: [Attachment-3-noncollusive-bidding-certification.pdf \(ny.gov\)](#)

3.1.7. New York State Vendor Responsibility Questionnaire

- 3.1.7.1. 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 vendor. 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, Bidders, 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 Vendor Responsibility Questionnaire.

3.1.7.2. Bidders are encouraged to complete the online form, as it will expedite Contract approval. If the Bidder does not have an online Questionnaire that is current and certified, the Bidder must complete a hardcopy Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon OPWDD's determination that the Bidder is responsible, and that OPWDD will be relying upon the Bidder's responses to the Questionnaire in making that determination.

3.1.7.3. The Bidder agrees to fully and accurately complete the NYS Vendor Responsibility Questionnaire which is available online at: [File Your Vendor Responsibility Questionnaire | Office of the New York State Comptroller](#).

OPWDD shall conduct reviews of each vendor for responsibility and responsiveness. OPWDD may, at OPWDD's sole discretion, request additional information, including meeting with the Bidder.

If the Bidder is determined by OPWDD to be not responsible, OPWDD shall inform the Bidder of such ruling. The Bidder shall have 30 days to request a meeting with OPWDD to explain the ruling and to demonstrate the finding to be incorrect or to correct/resolve any issues affecting the Bidder's responsibility. If OPWDD's findings remain unchanged after meeting with the Bidder, the Bidder shall be removed from consideration for this Contract.

3.1.8. **Procurement Lobbying Requirement**

3.1.8.1. On August 23, 2005, the Legislative Law and the NYS Finance Law (STF) were amended to include provisions for the regulation of attempts to influence State and other governmental entity procurement contracts. STF Sections 139-j and 139-k impose procurement record requirements relating to lobbying on procurement contracts.

3.1.8.2. Contracts subject to Procurement Lobbying Act Requirements

3.1.8.2.1. All procurement contracts with estimated annualized expenditures in excess of \$15,000 resulting from procurement transactions initiated on or after January 1, 2006 are subject to the procurement lobbying requirements and additional procurement record requirements.

3.1.8.2.2. State Finance Law defines a procurement contract as any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars.

3.1.8.2.3. Subject to certain exceptions, an assignment, amendment, renewal or extension of a procurement contract or any material change in a procurement contract resulting in a financial benefit to the Offerer is covered by the provisions of the Act.

3.1.8.2.4. Backdrop contracts, and any contracts resulting from mini-bids pursuant to the backdrop contracts, are also subject to this law.

- 3.1.8.3. This solicitation includes and imposes certain restrictions on communications between OPWDD and **Offerers**¹ during the procurement process. From the date of issuance of this RFA until contracts are awarded and approved, applicants and prospective applicants are restricted from making ANY contact, as defined in State Finance Law §139-j (1) (c), relating to this procurement other than written contact (e-mail) with the OPWDD staff members named in Section 1.6 of this RFA, unless it is a contact that is included among certain exceptions set forth in State Finance Law §139-j (3) (a).
- 3.1.8.4. **Attachment 4: Procurement Lobbying Law Certification of Compliance** (form available at [Attachment-4-procurement-lobbying-law-certification-of-compliance.pdf \(ny.gov\)](#)) must be completed and signed by the Bidder, and included in the Administrative Proposal, providing the representations outlined below.
- 3.1.8.4.1. The procurement record for every contract must include a determination that the Bidder is responsible in accordance with vendor responsibility requirements. In addition to the general responsibility determination, for all contracts subject to the State Comptroller's approval the procuring entity must make a separate responsibility determination as to whether the Bidder has: (i) knowingly and willfully violated the prohibitions against impermissible contacts or certain ethics provisions, or failed to timely disclose accurate and complete information or otherwise failed to cooperate with the procuring entity, or (ii) failed to disclose prior determinations of non-responsibility by any governmental entity for any of the above reasons within the previous four (4) years.
- 3.1.8.4.2. **Offerer Certification; Complete Disclosure**
- Every procurement record must include a disclosure by Bidders with regard to non-responsibility determinations within the past four (4) years based on: (i) impermissible contacts or other violations of STF §139-j; or (ii) the intentional provision of false or incomplete information to a governmental entity. (Note: To satisfy the requirement regarding the Bidder's disclosure, the governmental entity must specifically request information regarding prior findings of non-responsibility for violations of STF §139-j. A general request for prior findings of non-responsibility is not sufficient.) In addition, any procurement contract award shall contain a certification by the Offerer that the information provided to the procuring entity was complete, true and accurate.
- 3.1.8.4.3. **Contract Clause; Termination Provision**
- OPWDD is authorized to terminate the contract if the certification (see preceding paragraph) is found to be intentionally false or intentionally incomplete, as contained in Appendix A – Standard Clauses for All New York State Contracts.

¹ STF §139-j(1)(h) defines "Offerer" as "shall mean the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicates with the procuring agency regarding a governmental procurement in the exercise of its oversight duties shall not be considered an offerer."

- 3.1.8.4.4. Agency Policy and Prohibitions Regarding Permissible Contacts STF §139-j restricts contacts² by Offerers with any governmental entity³ regarding procurement contracts. Subject to certain exceptions set forth in STF §139-j(3), contacts between Offerers and governmental entity personnel, other than the governmental entity's designated contact person(s), are prohibited during the restricted period⁴ of the governmental procurement⁵.

The statute requires that "[e]very governmental entity shall incorporate a summary of the entity's policy and prohibitions regarding permissible contacts during a governmental procurement" and a copy of the governmental entity's procedures be included in the solicitation or bid documents for all procurement contracts. The statute further requires that if a member, officer, or employee of a governmental entity becomes aware that an Offerer has violated the permissible contacts provisions of the law, such person shall immediately notify the Ethics Officer, Inspector General, or other official of the procuring governmental entity responsible for investigation of such violations.

- 3.1.8.4.5. Affirmation of Compliance

All Offerers must provide a written affirmation that the Offerer understands and agrees to comply with the governmental entity's procedures relating to permissible contacts during the procurement. See Section 1.6 of this RFA for OPWDD designated contact.

- 3.1.8.4.6. Record of Contacts

² STF §139-j(1)(c) defines "contacts" as "any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity's conduct or decision regarding the governmental procurement."

³ STF §139-j(1)(a) defines "governmental entity" as "(1) any department, board, bureau, commission, division, office, council, committee or officer of the OPWDD, whether permanent or temporary; (2) each house of the OPWDD legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the OPWDD; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (7) a subsidiary or affiliate of such a public authority."

⁴ STF §139-j(1)(f) defines "restricted period" as "the period of time commencing with the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Proposers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the State comptroller."

⁵ STF §139-j(1)(e) defines "governmental procurement" as "(i) the public announcement, public notice, or public communication to any potential vendor of a determination of a need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Proposer."

For each procurement contract, STF §139-k requires that all contacts between an Offerer and a governmental entity during the restricted period be recorded and made a part of the procurement record.

3.1.9. Contractor Requirements and Procedures For Equal Employment And Business Participation Opportunities For Minority Group Members And New York State Certified Minority/Women-Owned Businesses

3.1.9.1. By submission of a bid in response to this solicitation, the Bidder agrees with all of the terms and conditions of Appendix A, Clause 12 – Equal Employment Opportunities for Minorities and Women.

3.1.9.2. In accordance with Article 15-a of the New York State Executive Law and in conformance with the regulations promulgated by the Minority and Women’s Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Bidder/Contractor agrees to be bound by provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority and women-owned business enterprise participation.

3.1.9.3. The EEO and M/WBE requirements are set forth in **Appendix A Supplement – 2** of this RFA.

3.1.9.4. The MWBE EEO forms provided in **Appendix A Supplement – 2** must be completed and submitted with the Administrative Proposal.

3.1.9.5. The M/WBE goal established under this solicitation is **0%**.

3.1.10. New York State Service-Disabled Veteran-Owned Businesses

3.1.10.1. Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. OPWDD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of OPWDD contracts.

3.1.10.2. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

3.1.10.3. The SDVOB program requirements as they pertain to this RFA are detailed in **Appendix A Supplement – 3: SDVOB Requirements and Procedures**.

3.1.10.4. The Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance form, included in this RFA as **Appendix A Supplement – 3: SDVOB Requirements and Procedures**, must be completed and submitted with the Administrative Proposal.

3.1.10.5. The SDVOB goal established under this RFA is **0%**.

3.1.11. Encouraging Use Of NYS Businesses In Contract Performance

3.1.11.1. Bidders are strongly encouraged and expected to consider New York State businesses in the fulfillment of the Contract resulting from this RFA. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

- 3.1.11.2. The **Attachment 6:** Encouraging Use of New York State Businesses form must be completed and submitted with the Administrative proposal and is available at [Attachment 6 Encouraging Use Of NY Bus.](#)
- 3.1.12. **Consultant Disclosure Reporting Requirements**
 - 3.1.12.1. The selected Bidder must comply with the requirements of STF §163(4)(g), which imposes certain reporting requirements on Contractors doing business as vendors with New York State. In accordance with these reporting requirements, the selected Bidder agrees to complete and submit Contractor's Planned Employment Report (Attachment 7– Form A) within two (2) business days after receiving notice of a Contract award and Contractor's Annual Employment Report (Attachment 7 – Form B) by May 15th for each fiscal year (April 1 – March 31) the Contract term is in effect.
 - 3.1.12.2. While the Planned Employment Report (Form A) is a one-time projection of the planned employment under the upcoming Contract term, the Annual Employment Report (Form B) is a reporting of the actual employment history for the previous fiscal year.
 - 3.1.12.3. Instructions for completing and submitting Forms A and B are included in this Section and the Forms are provided in **Attachment 7** of this RFA available at [Attachment-7-consultant-disclosure-reporting-requirements.pdf \(ny.gov\)](#). Form A may be submitted with proposals and must be submitted upon contract award.
- 3.1.13. **Conflicts Of Interest**
 - 3.1.13.1. Throughout the procurement process, Bidders must identify and bring to the attention of OPWDD actual or apparent conflicts of interest as knowledge of such conflicts arise, as follows:
 - 3.1.13.2. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Bidder or former officers and employees of the Agencies and their Affiliates, in connection with the Bidder's rendering services enumerated in this RFA. If a conflict does or might exist, please describe how the Bidder would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.
 - 3.1.13.3. The Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, "JCOPE"), and if so, a brief description must be included indicating how any matter before JCOPE was resolved or whether it remains unresolved.
 - 3.1.13.4. The **Attachment 8:** Vendor Assurance of No Conflict of Interest or Detrimental Effect form must be completed and submitted with the Administrative Proposal and is available at [Attachment 8 Bidder Assurance of No Conflict of Interest \(ny.gov\)](#).
 - 3.1.13.5. Any Bidder awarded a contract under this RFA will have an on-going obligation to inform OPWDD of any actual or apparent conflicts of interest.
- 3.1.14. **Executive Order No. 177 Certification**

- 3.1.14.1. In accordance with Executive Order No. 177, the Bidder must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.
- 3.1.14.2. The **Attachment 9:** EO 177 Anti-Discrimination Certification must be completed and submitted with the Administrative Proposal, and is available at [Attachment 9 Executive Order 177 Antidiscrimination \(ny.gov\)](#).
- 3.1.15. **Sexual Harassment Policy Certification of Compliance with State Finance Law §139-L**
 - 3.1.15.1. By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.
 - 3.1.15.2. The **Attachment 10:** Sexual Harassment Policy Certification form must be completed and submitted with the Administrative Proposal, and is available at [Attachment 10 Sexual Harassment Policy Certification \(ny.gov\)](#).
- 3.1.16. **Tax Law Section 5-A**
 - 3.1.16.1. The Bidder awarded a Contract pursuant to this RFA must comply with the requirements of Tax Law Section 5-a, which requires persons awarded contracts valued at more than \$100,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor, or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person has made sales delivered within New York State of more than \$300,000 during the relevant period. The OSC or other responsible approver cannot approve the Contract unless the contractor is registered with the New York State Department of Taxation and Finance to collect sales and compensating use taxes.
 - 3.1.16.2. The Contractor Certification forms, ST-220-TD and ST-220-CA, must be filed in compliance with Tax Law Section 5-a. Any Bidder awarded under this RFA must, within seven (7) calendar days of notification of award, file ST-220-TD directly with the Department of Taxation and Finance at the address provided on the form and submit ST-220-CA to OPWDD.
 - 3.1.16.3. Bidders can visit the New York State Department of Taxation and Finance website to download the forms and obtain more information at [Certification Requirements for Businesses that Contract with New York State \(ny.gov\)](#)
 - 3.1.16.4. Bidders may call Tax and Finance at 1-800-698-2931 for contractor sales tax information. For additional information and frequently asked questions, please refer to Taxation and Finance's website at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.
 - 3.1.16.5. Bidders may call Tax and Finance at 1-800-972-1233 for questions relating to Tax Law §5-a and relating to a company's registration status with Taxation and Finance. For additional information and frequently asked questions, please refer to Taxation and Finance's website at <http://www.tax.ny.gov/>.

- 3.1.17. **Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia**
- 3.1.17.1. Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found here: [No. 16: Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia | Governor Kathy Hochul \(ny.gov\)](#)
- 3.1.17.2. The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.
- 3.1.17.3. As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.
- 3.1.17.4. The **Attachment 11: Certification Under Executive Order No. 16**, must be completed and submitted with the Administrative proposal, and is available at: [Attachment 11 Executive Order 16 \(ny.gov\)](#).
- 3.1.18. **Vendor Identification Number**
- 3.1.18.1. To do business with the State of New York, each Bidder is required to obtain a NYS Vendor Identification Number for use in the Statewide Financial System (SFS). If you do not already have a Vendor ID Number, the Substitute Form W-9 must be completed and submitted directly to OPWDD upon notification of award. The purpose of the Substitute Form W-9, which will provide the Contractor’s taxpayer identification number, business name and business contact person, is to allow the State to establish a vendor file in the State Financial System. Note: IRS Form W-9 is not acceptable for this purpose.
- 3.1.18.2. The Substitute Form W-9 is available at [New York State Substitute Form W-9](#).
- 3.1.19. **Subcontractors**
- Bidders intending to subcontract must submit **Attachment 5: Listing of Proposed Subcontractors** with the Administrative Proposal available at [Attachment 5: Listing of Subcontractors \(ny.gov\)](#).

3.2. Technical Proposal Requirements

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Bidder and/or subcontractor(s) to perform the services contained in this RFA. The Technical Proposal should demonstrate the qualifications of the Bidder and/or subcontractor(s) and the staff to be assigned to provide services related to the services included in this RFA.

A Technical Proposal that is incomplete in any material respect may be eliminated from consideration. The following outlines the information requested to be provided by Bidders. The information requested should be provided in the prescribed format of this Section 3 of this RFA. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFA may be subject to verification for accuracy.

While additional data may be presented, the following should be included. Please provide the information in the same order in which it is requested. Your proposal should contain sufficient information to assure OPWDD of its accuracy. Failure to follow these instructions may result in disqualification.

Pricing information contained in the Cost Proposal **must not** be included in the Technical Proposal documents.

3.2.1. Bidder Qualifications and Experience

- 3.2.1.1. Bidder must provide Bidder details and describe experience relevant to the successful accomplishment of the Scope of Work described in Section 2 of this RFA.
- 3.2.1.2. The following will be scored by evaluators as part of the Technical Evaluation.
- 3.2.1.3. Provide the following information for the Lead Provider Agency and each Member Agency:
 - Provider name, address, Provider ID number;
 - designated contact for each Provider (name, phone, and email); and
 - experience with producing OPWDD Discovery Reports and Career and Vocational Plans (per Section 2.4.1.3 of this RFA).
- 3.2.1.3.1. Preference will be given to a Group of Providers.
- 3.2.1.3.2. Preference will be given to a Group of Providers working regionally.
- 3.2.1.4. Bidder must provide how they meet the **preferred qualifications** below, addressing the Bidder's qualifications in the exact order as listed in Sections 3.2.1.4.1. through 3.2.1.4.7.1.
- 3.2.1.4.1. Provide for the Lead Provider Agency and each Member Agency a list of vocational and employment services authorized in their OPWDD Operating Certificate and which services are currently being delivered.
 - 3.2.1.4.1.1. Preference will be given if either combined or singularly the full continuum of vocational and employment services is offered. The full continuum of services includes Prevocational Services, Pathway to Employment, and Supported Employment (SEMP).
- 3.2.1.4.2. Describe the Lead Provider Agency and each Member Agencies' business relationships in the community including business names.

- 3.2.1.4.2.1. Preference will be given to Providers with strong business relations in the community, including business partnerships related to this RFA.
- 3.2.1.4.3. Provide a detailed plan for coordinating community-based experiences with the career-specific vocational training either within the Lead Provider Agency or between Member Agencies of the Group of Providers.
 - 3.2.1.4.3.1. Preference will be given to Providers who demonstrate a clear plan for coordinating community-based experiences with the career-specific vocational training either within the Lead Provider Agency or between Member Agencies of the Group of Providers.
- 3.2.1.4.4. Describe the career-specific vocational training program and whether the program will be adapted from an existing curriculum.
 - 3.2.1.4.4.1. Preference will be given to Providers that adapt an existing curriculum or that partner with organizations that have an already designed training program that can be adapted for individuals with I/DD served by OPWDD in a career-specific area including but not limited to colleges, community colleges, SUNY/CUNY, private industry employer, industry associations, Department of Labor or Empire State Development, apprenticeship/pre-apprenticeship programs, BOCES, or proprietary schools.
- 3.2.1.4.5. Describe the career targeted in the regional and/or local job market and the employment outlook for this career-specific vocational training program.
 - 3.2.1.4.5.1. Preference will be given to a career-specific vocational training program specifically targeted to the regional/local job market.
- 3.2.1.4.6. Provide the estimated amount of individuals the program will train annually.
 - 3.2.1.4.6.1. Preference will be given to Provider(s) able to deliver training to a greater number of individuals annually, with a minimum of 50 individuals in FY23-24 and 75 individuals each fiscal year thereafter.
- 3.2.1.4.7. Describe the location(s) for in-person classroom instruction.
 - 3.2.1.4.7.1. Preference will be given to a classroom instruction location that, for example, is a partnership with businesses, private industry employers, industry associations, and apprenticeship programs.

3.2.2. **Work Plan**

Bidder must submit a detailed Work Plan and Timeline as part of their Technical Proposal. This must include goals, objectives and desired outcomes with corresponding deliverables, tasks/activities, performance measures, milestones and timelines. The Work Plan will be scored by evaluators as part of the Technical Proposal.

3.2.2.1. Career-Specific Training Program Development

The Bidder must provide a comprehensive description of the project activities, including the following:

- 3.2.2.1.1. If a Group of Providers, describe your partnership agreement/understanding (for example, will there be a Lead Agency, will other agencies send individuals to the training program and provide other HCBS Waiver services, etc.);

- 3.2.2.1.2. Summary of the Lead Provider and each Member Agencies' relationships with local/regional businesses;
- 3.2.2.1.3. Provide sample job titles that would be available after an individual completes the program and what marketable skills the individual will obtain;
- 3.2.2.1.4. The Lead Provider and Member Agency/Agencies includes a list of HCBS Waiver services currently being provided and HCBS Waiver Services authorized in their OPWDD Operating Certificate specifically for Prevocational Services, Pathway to Employment, and Supported Employment (SEMP). Employment Training Program (ETP), although not a HCBS Waiver service, should be included in the list of current services being provided;
- 3.2.2.1.5. How the Lead Provider and/or Member Agencies will work together to coordinate the career-specific vocational training program and the related community experiences utilizing HCBS Waiver services, such as but not limited to creating a liaison/coordination function;
- 3.2.2.1.6. Rationale/justification (including available research) for the selection of the career-specific vocational training chosen based on regional/local employer needs and Provider experience with current job openings and meeting local/regional employer needs;
- 3.2.2.1.7. Estimates for: The number of total training hours for the program, number of training hours per day and per week, expected in-person class size and over what period of time it will be delivered (i.e., 3 months);
- 3.2.2.1.8. Details and qualifications of training program development partners. Preference will be given to Bidders that partner with organizations that have an already designed training program that can be adapted for individuals with I/DD served by OPWDD in a career-specific area including but not limited to: colleges, community colleges, SUNY/CUNY, private industry employer, industry associations, Department of Labor or Empire State Development, apprenticeship/pre-apprenticeship programs, BOCES or proprietary schools;
- 3.2.2.1.9. Description of how the Bidder will adapt/design/develop a minimum of 75 Hours and a maximum of 100 Hours per class with each class delivered over no more than five (5) months of Career-Specific Vocational Training Program specifically for individuals with intellectual and developmental disabilities served by OPWDD – including a description of the content of the training program including skill training and practice related to the specific career, safety in the career-specific workplace and communicating with supervisors and coworkers; and the name of the original developer, if applicable (preference will be given to adapting an existing training program).
- 3.2.2.2. Career-Specific Training Program Delivery
 - 3.2.2.2.1. The Bidder must provide a comprehensive description of the project activities, including all of the following:
 - 3.2.2.2.2. Delivery Plan including the number of individuals that can be served annually (preference will be given to greater capacity with an expectation of a minimum of 50 people in FY23-24 and 75 people each fiscal year thereafter);
 - 3.2.2.2.3. Delivery Plan including the planned ratio of instructors or classroom aides to individuals participating, taking into consideration that the individuals attending will not be supported by staff funded through HCBS Waiver during the classroom sessions;

- 3.2.2.2.4. The process the Bidder will use for selecting individuals for the training program, for example (but not limited to) the Provider will first consider individuals already enrolled in SEMP and unemployed with a stated career interest in the training program or will first consider individuals with a completed discovery and a written career and vocational plan for the first sessions (successful Bidders will receive a format to assess/evaluate individuals);
- 3.2.2.2.5. How the Lead Provider or Group of Provider Agencies will work together to coordinate the career-specific vocational training program (which may include creating a liaison/coordination function) and community vocational experiences. These community vocational experiences are funded through the HCBS Waiver services;
- 3.2.2.2.6. The proposed location for the delivery of the training program (preference will be given to locations that partner with businesses and other industry organizations);
- 3.2.2.2.7. Describe the type of information sheet the Provider/Group of Providers will develop to present the potential employers after an individual completes the program and job development has begun;
- 3.2.2.2.8. Describe the evaluation tool for the skills and competencies achieved by the individual to be shared with the individual and support team to determine next steps.
- 3.2.2.3. **Timeline of Deliverables**
 - 3.2.2.3.1. Bidder must provide a timeline and schedule for delivering training program (no longer than five (5) months) and the number of trainees for June 1, 2023 – March 31, 2024, April 1, 2024 – March 31, 2025, and April 1, 2025 – March 31, 2026.
 - 3.2.2.3.2. Timeline of Deliverables as outlined in the Scope of Work, Section 2.5 of this RFA.
- 3.2.3. **Diversity Practices**
 - 3.2.3.1. Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with non-government entities and governmental units other than the State of New York.
 - 3.2.3.2. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs. OPWDD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of applicants to this procurement is practical, feasible, and appropriate. Accordingly, applicants are required to respond to the eight (8) questions included in Attachment 13: Diversity Practices Questionnaire of this RFA, which is available at [Attachment 13: Diversity Practices Questionnaire \(ny.gov\)](#) and in the Presubmissions Upload tab of the [Career-Specific Vocational Training Opportunity](#) in the Grants Gateway System Opportunity. The questionnaire must be completed and uploaded to the designated space provided in the Pre-Submission Uploads tab when completed.

3.3. Cost Proposal – REVISED

PLEASE NOTE: The Attachment 2: Cost Proposal has been revised is now labeled, “**REVISED ATTACHMENT 2: COST PROPOSAL**”.

Applicants must use the REVISED ATTACHMENT 2: COST PROPOSAL provided in an email sent with the Responses to Questions, and has been uploaded to the [Procurement Opportunities | Office for People With Developmental Disabilities \(ny.gov\)](https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In (ny.gov)) and [https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In \(ny.gov\)](https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In (ny.gov)).

Applicants submitting the incorrect Cost Proposal will be disqualified.

- 3.3.1. Applicants must complete and submit a Budget Detail Narrative document and the **REVISED ATTACHMENT 2: COST PROPOSAL** ~~Cost Proposal (Attachment 2)~~ in the Pre-Submission Uploads tab in Grant Opportunity: **Career-Specific Vocational Training** in Grants Gateway.

PLEASE NOTE: Applicants must enter “\$1” in the Other Expenditure Line of the Budget Properties tab in the Grants Gateway Application. Contract Total must not be entered.

- 3.3.1.1. **Budget Detail Narrative.** Bidders must provide the following in a format of the Bidder’s preference:
- 3.3.1.1.1. A detailed **Development Budget** for the career-specific vocational training program including cost of purchasing or developing the training program, staff time to develop or adapt training program with Member Agencies or partners (sub-contractors), project management, a delivery plan and an outline of the liaison/coordination function plan and other associated costs with the development of a training program with a minimum of 75 hours and a maximum of 100 hours of career-specific vocational training over no more than a five (5) month period; and
- 3.3.1.1.2. A detailed **Delivery Plan Budget** for each career-specific vocational training program that includes all operating costs (excluding development costs) including (but not limited to) cost of delivery location, instructor, classroom aides, equipment, software, written materials, classroom space, transportation or transportation stipend, and staff to coordinate with other HCBS Waiver service Providers and deliver the training program.
- 3.3.1.2. **REVISED ATTACHMENT 2: COST PROPOSAL** ~~Attachment 2: Cost Proposal~~
- 3.3.1.2.1. A cost for the **Career-Specific Vocational Training Program Development** based on the budget described in Section 3.3.1.1.1 above to be entered on the **REVISED ATTACHMENT 2: COST PROPOSAL** ~~Attachment 2: Cost Proposal~~.
- 3.3.1.2.2. A **Per Person Cost** for the delivery of training based on the budget described in Section 3.3.1.1.2. above to be entered on the **REVISED ATTACHMENT 2: COST PROPOSAL** ~~Attachment 2: Cost Proposal~~. This is the amount the vendor will be paid per person who fully completes the program and pro-rated based on the percentage of attendance if an individual partially completes the program.

- 3.3.1.3. All costs must be related to the deliverables described in the Bidder's proposal as required in Section 2.4 of this RFA.
- 3.3.1.4. All costs must be rounded to the nearest hundredth value (2 decimal places).
- 3.3.2. Payments will be made as follows:
 - 3.3.2.1. March 17, 2023: Advance Payment of 90% of Total Cost for **Career-Specific Vocational Training Program Development**.
 - 3.3.2.2. May 15, 2023: 10% Withhold to be paid when Career-Specific Vocational Training Outline/Topics of Curriculum and Final Delivery Plan (due April 14, 2023) is submitted and approved by OPWDD.
 - 3.3.2.3. Quarterly Claims for Reimbursement of Services Provided: with supporting documentation of individuals completing the Training Program based on per person cost (pro-rated for individuals completing partial training) as required by OPWDD.
- 3.3.3. OPWDD will not be responsible for expenses incurred in preparing and submitting the application. Such costs must not be included in the Cost Proposal.

4. PROPOSAL SUBMISSION REQUIREMENTS

4.1. No Late Submissions

All proposals must be submitted and received by the Application Due Date and time specified in Section 1.4 of this RFA. The Grants Gateway will not allow submissions after the Due Date and time. Bidders are strongly encouraged to submit Applications 24 to 48 hours prior to the Due Date and time.

4.2. Proposal Redactions - Freedom of Information Law / Trade Secrets

4.2.1. New York State's Freedom of Information Law (FOIL) (Public Officers Law, Article 6, Sections 84-90), available at: [New York State Freedom of Information Law \(FOIL\) | Office for People With Developmental Disabilities \(ny.gov\)](https://www.ny.gov/new-york-state-freedom-of-information-law-foil-office-for-people-with-developmental-disabilities), promotes the public's right to know the process of governmental decision-making and grants maximum public access to governmental records. The proposal of the successful Bidder and the proposals of unsuccessful Bidders may be subject to disclosure under FOIL.

4.2.2. However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful Bidder's contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise. Please note that all information that an Bidder may claim as proprietary, copyrighted or rights-reserved is not necessarily protected from disclosure under FOIL.

4.2.3. If there is information in an Bidder's proposal that a Bidder's claims meets the definition set forth in Section 87(2)(d), the Bidder must provide a list, clearly and specifically identifying any portion of the proposal that the Bidder believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law. See Appendix B: Contract Boilerplate, Section 33. Public Information and Freedom of Information Law (FOIL).

4.2.4. Failure to identify the information which an Bidder believes should be protected by Section 87(2) (d) may result in such information being disclosed if a request is received.

4.2.5. It is a Bidder's responsibility to consult an attorney with any questions the Bidder may have about New York State's Freedom of Information Law. All work products described herein may also be subject to FOIL disclosure.

4.2.6. The State will not honor any attempt by an Bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.

4.2.7. The Contractor must provide to the Division/State all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Division/State pursuant to the Freedom of Information Law.

4.2.8. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by OPWDD. Blanket assertions of proprietary material will not be accepted and failure to specifically designate proprietary material may be deemed a waiver of any right to confidential handling of such material.

4.3. Instructions for Preparing the Application

- 4.3.1. Bidders must submit a complete proposal as outlined in this Section 4 of this RFA. A proposal that does not comply with these requirements may be deemed non-responsive.
- 4.3.2. After submission of the Notice of Intent, as requested in Sections 1.9 of this RFA, Providers may submit an application. The Notice of Intent is not mandatory. If a Provider does not submit a Notice of Intent, they will be eligible to participate in this RFA and may submit an application.
- 4.3.3. Applications are due by the Application Due Date and Time as stated in Section 1.4 of this RFA. Applications received after the Application Due Date and Time will not be accepted. Most required components of applications must be entered into the Grants Gateway at https://grantsgateway.ny.gov/IntelliGrants_NYSGG/module/nysgg/goportal.aspx by that date and time for further consideration. Hand-delivered, mailed, emailed or facsimiled submissions will not be accepted.
- 4.3.4. While additional data may be included, Applicants must provide all information in the prescribed format in which it is requested. The following components must be included with each application and must be provided in the prescribed format in which it is requested. Failure to follow these instructions may result in disqualification. The following three components will comprise a complete application:
- 4.3.5. Attestations / Checklist (Administrative Proposal Submission)
- 4.3.6. Technical Proposal
- 4.3.7. Cost Proposal

PLEASE NOTE: The Attachment 2: Cost Proposal has been revised is now labeled, “**REVISED ATTACHMENT 2: COST PROPOSAL**”.

Applicants must use the REVISED ATTACHMENT 2: COST PROPOSAL provided in an email sent with the Responses to Questions, and has been uploaded to the [Procurement Opportunities | Office for People With Developmental Disabilities \(ny.gov\)](#) and [https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In \(ny.gov\)](https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In (ny.gov)).

Applicants submitting the incorrect Cost Proposal will be disqualified.

- 4.3.8. An application that is incomplete in any material respect may be eliminated from consideration. The following outlines the required information to be provided by Applicants for each component of an application submission to constitute a complete application. All applications will be subject to verification by OPWDD.
- 4.3.9. Applicants are strongly encouraged to submit their applications well in advance of the Application Due Date and Time as provided in Section 1.4 of the RFA to avoid unforeseen submission problems.
- 4.3.10. Exhibits Available in Grants Gateway

- 4.3.10.1. The following external documents are referenced throughout this RFA, and are available in the Opportunity in Grants Gateway under **Grant Opportunity: “Career-Services Vocational Training RFA”**:

Exhibit I: Master Contract for Grants

- 4.3.10.2. Additional Requirements

- 4.3.10.2.1. The NYS Procurement forms and documents are provided throughout this RFA with links to external websites or in APPENDIX A SUPPLEMENT – 1, 2, and 3, and Attachment 1: Attestations / Checklist (Administrative Proposal Submission). The same forms are also available as separate attachments at the end of this RFA. All forms must be completed and signed as indicated, and included with the Applicants Attachment 1: Attestations / Checklist (Administrative Proposal Submission), and uploaded to the Pre-Submissions tab of the Grants Gateway **Grant Opportunity: “Career-Specific Vocational Training”** in the designated space provided. Attachment 1: Attestations / Checklist (Administrative Proposal Submission) or required forms that are incomplete in any material respect may be deemed non-responsive and eliminated from consideration.

- 4.3.10.2.2. Applicants must upload to the designated space on the Pre-Submission Uploads tab, the most recent Consolidated Fiscal Report CFR schedule 2A for the purpose of demonstrating overall financial viability per Section 1.3.5. of this RFA:

➤ CFR Schedule 2A

- 4.3.10.2.3. The following forms, provided in Appendix A Supplement – 2 and in accordance with Section 3.1.9. of this RFA, must be uploaded to the designated space on the Pre-Submission Uploads tab:

- MWBE EEO Policy Statement (in accordance with Section 3.1.9. and Appendix A Supplement – 2 of this RFA)
- Staffing Plan (in accordance with Section 3.1.9. and Appendix A Supplement – 2 of this RFA)
- SDVOB Utilization Plan (in accordance with Section 3.1.9. and Appendix A Supplement – 2 of this RFA)

- 4.3.10.2.4. The following requirements of this RFA can be found in Attachment 1: Attestations / Checklist (Administrative Proposal Submission) and in the Pre- Submissions tab in **Grant Opportunity: “Career-Specific Vocational Training”**:

Applicants must complete each required form and upload it to the designated space of the Pre- Submission Uploads tab.

- Non-Collusive Bidding Certification (RFA Section 3.1.6.)
- Procurement Lobbying Law Certification of Compliance (RFA Section 3.1.8.)
- Encouraging Use of New York State Businesses In Contract Performance (RFA Section 3.1.11.)
- Vendor Assurance of No Conflict of Interest or Detrimental Effect (RFA Section 3.1.13)
- Executive Order 177 Certification (RFA Section 3.1.14.)

- Sexual Harassment Policy Certification (RFA Section 3.1.15.)
- Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia (RFA Section 3.1.17.)
- Listing of Proposed Subcontractors (RFA Section 3.1.19.)

4.4. Joint Proposals

Joint proposals with multiple OPWDD HCBS Waiver service Providers will be given preference in order to provide career-specific vocational training to at least 50 people in FY 23-24 and 75 people in each fiscal year thereafter. Multiple Providers will allow for the community vocational experiences that occur outside of the career-specific vocational training to be developed within each person's geographical region. However, proposals can be submitted with one (1) Provider with the capability to identify and train at least 50 people in FY 23-24 and 75 people in each fiscal year thereafter.

4.5. Proposal Validity

Bids must remain open and valid, and effective, firm and irrevocable for at least 270 days from the Application Due Date, unless the time for awarding the Contract is extended by mutual consent of OPWDD and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 270-day period, until OPWDD makes a tentative award of the Contract or the Bidder withdraws the bid in writing.

4.6. Accuracy of Proposals

Bidders are responsible for the accuracy of their proposals. All Bidders are directed to take extreme care in developing their proposals. Bidders are cautioned to review their proposals carefully prior to bid submittal, as requests for bid withdrawals of any type are not likely to be granted. If a Bidder submits a proposal ahead of the submission deadline, they may submit an amended proposal any time prior to the Application Due Date indicated in the Calendar of Events, Section 1.4 of this RFA.

4.8. General Submission Requirements for Proposals

- 4.8.1. Bidders must submit a complete response to this RFA that satisfies the requirements set forth in **Attachment 1: Attestations / Checklist (Administrative Proposal Submission)**. Failure to do so may render the Bidder's proposal non-responsive.
- 4.8.2. Each Bidder is expected to provide OPWDD with information, evidence and demonstrations that will make possible a contract award that best serves the stated interests of OPWDD and the State of New York. Bidders are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, systems, processes, and procedures.
- 4.8.3. Bidders should prepare their proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFA. Proposals containing preponderance of boilerplate text are discouraged. Emphasis in each proposal should be on completeness and clarity of content.
- 4.8.4. Failure by a Bidder to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores during the evaluation or may result in determination of a non-responsive proposal. Responses to

complex RFA requirements that are stated in a form semantically equivalent to “Bidder agrees to comply” may be rejected for non-responsiveness at the discretion of OPWDD.

- 4.8.5. All proposals submitted in response to this RFA must be written in the English language, with quantities expressed using Arabic numerals and United States Dollars (\$ USD), as applicable.
- 4.8.6. The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a Contract or approval by the State Comptroller, if required.

5. EVALUATION METHODOLOGY

5.1. Method of Award

- 5.1.1. OPWDD will make an award for the services described in this RFA to a responsive and responsible Bidder on a “Best Value” basis. Best Value means that the proposal that optimizes quality, cost, and efficiency among responsive and responsible Bidders shall be selected for award (State Finance Law, Article 11, Section 163).
- 5.1.2. The evaluation process will be conducted in a comprehensive and impartial manner. The Technical Proposal will be weighted at 80%, and the Cost Proposal will be weighted at 20%. There will be no points awarded to the Administrative Proposal, which is pass/fail as outlined in Section 5.2.
- 5.1.3. An evaluation committee (the “Committee”) will be designated and will be comprised of OPWDD staff. OPWDD reserves the right to make changes in the Committee’s membership as necessary.
- 5.1.4. Proposals determined to comply with the requirements set forth in this RFA and submission requirements outlined in Section 4 of this RFA will be evaluated based on the criteria detailed in the sections below.

5.2. ADMINISTRATIVE PROPOSAL REVIEW (PASS/FAIL)

- 5.2.1. After the proposal opening, each proposal will be screened for completeness and conformance with the proposal submission requirements as outlined in Section 4 of this RFA. Bidders should utilize the **ATTACHMENT 1: Attestations / Checklist (Administrative Proposal Submission)** to ensure the required documents are included in their submission. Incomplete responses, the failure to complete as specified, and/or the failure to provide any of the required functionality may result in a proposal being deemed non-responsive and the disqualification of the Bidder, and the Bidder will be notified accordingly.
- 5.2.2. Submitted proposals will be evaluated on a Pass/Fail basis to determine whether the Bidder satisfies the RFA’s Minimum Qualifications specified in Section 1.3. of this RFA. Proposals that fail to meet the minimum qualifications and the required attestations will be deemed non-responsive, will not be further evaluated, and the Bidder will be notified accordingly. Passing proposals will proceed to the Technical and Cost Proposal Evaluations. Bidders may still be disqualified if it is later determined that the Bidder did not meet all RFA minimum qualifications and should not have qualified to move on to the Technical and Cost Proposal Evaluations stage.

5.3. TECHNICAL EVALUATION (80 POINTS)

- 5.3.1. The technical evaluators will independently review and score each Technical Proposal. The criteria against which each proposal will be evaluated are described in Section 3.2 of this RFA. Final scores will be determined averaging the Technical Evaluators’ scores to calculate the score for each responsive Bidder.
- 5.3.2. Technical Requirements for Scoring:
 - Bidder experience and qualifications as specified in Sections 1.3. and 3.2.1. of this RFA (20 points)

- Workplan/Timeline
 - o Career-Specific Training Program Development, as specified in Section 2.4.1 of this RFA (30 points)
 - o Career-Specific Training Program Delivery, as specified in Section 2.4.2. of this RFA (25 points)
- Diversity Practices as specified in Section 3.2.3. of this RFA (5 points)

5.4. COST EVALUATION (20 POINTS)

PLEASE NOTE: The Attachment 2: Cost Proposal has been revised is now labeled, “**REVISED ATTACHMENT 2: COST PROPOSAL**”.

Applicants must use the REVISED ATTACHMENT 2: COST PROPOSAL provided in an email sent with the Responses to Questions, and has been uploaded to the [Procurement Opportunities | Office for People With Developmental Disabilities \(ny.gov\)](https://www.nyscr.ny.gov/login.cfm) and <https://www.nyscr.ny.gov/login.cfm> New York State Contract Reporter - Log In (ny.gov).

Applicants submitting the incorrect Cost Proposal will be disqualified.

5.4.1. Bidder’s Cost Proposals will be scored by the Contract Management Unit, separately from the Technical Proposal. The Cost Proposal evaluation will be based on the grand total cost of meeting the deliverables as outlined in Section 2 of this RFA. If a Cost Proposal is found to be non-responsive, that Proposal may not receive a cost score and may be eliminated from consideration.

5.4.2. The Bidder with the lowest price submitted on the Attachment 2: Cost Proposal per Section 3.3.1.2 of this RFA, will be awarded 15 of the 20 points allocated to the Cost Evaluation. The score for each of the remaining Bidders will be proportionate to the lowest Bidder. The formula for the evaluation of other Bidder’s cost will be: (lowest cost Bidder / Bidder being evaluated cost) x maximum points.

5.4.3. Up to an additional 5 points will be awarded for the **Budget Detail Narrative** as required in Section 3.3.1.1. of this RFA.

5.5. Final Composite Score

5.5.1. A final composite score will be calculated by combining the Technical Proposal score and the Cost Proposal score. The proposals will be ranked based on the combined scores. The Bidder with the highest score may receive a tentative award, subject to successful contract negotiations.

5.5.2. Should more than one Bidder obtain the same total score, the tie will be broken using the Cost Proposal score. When price and other factors are found to be substantially equivalent, OPWDD will select the winning Bidder at its sole discretion.

5.6. Notification of Award and Non-Award

The tentative awardee(s) will be advised of selection by OPWDD through the issuance of a formal written correspondence indicating a proposed award sent via email. All Bidders will

be notified of the selection or rejection of their bid via email. Should OPWDD and a tentative awardee be unable to reach agreement as to the terms of the Contract within a reasonable time, as determined by OPWDD, OPWDD may withdraw the award and proceed to the next highest scoring Bidder.

5.7. Form of Contractual Agreement

5.7.1. Following notification of award, the successful Bidder will be expected to sign a contract with OPWDD. The final contract will be in the form incorporated into this RFA as **Appendix B, Master Contract for Grants**.

5.7.2. Any exception to the Contract must be raised in an Bidder question submitted to OPWDD pursuant to the Calendar of Events and in accordance with the Question and Answer process set forth in Section 1.7. OPWDD does not intend to negotiate any changes in the provisions of the Contract following the receipt of proposals.

5.8. Opportunity for Debriefing

Once an award has been made, Bidders may submit a written request for a debriefing as to why their bid did not result in an award. A debriefing shall be requested by an unsuccessful Bidder within fifteen (15) calendar days of release by OPWDD of a notice in writing or electronically that the Bidder's proposal is unsuccessful. The purpose of the debriefing is to provide information to each Bidder about the scoring and evaluation of the requesting Bidder's bid. OPWDD will not provide Bidders with information relating to another Bidder's bid. This is also an opportunity for an Bidder to learn how to improve future bids.

5.9. The OPWDD Bid Protest Policy - Formal Written Protests

5.9.1. Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any Vendor or prospective Vendor who believes that there are errors or omissions in the procurement process, or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to the OPWDD and request administrative relief concerning such action ("formal protest").

5.9.2. A formal protest must be submitted in writing to the OPWDD at marc.l.kleinhenz@opwdd.ny.gov. A formal protest must identify the name of the RFA and the award date and include a statement of all legal and/or factual grounds for disagreement with an OPWDD specification or purchasing decision, a description of all remedies or relief requested, and copies of all applicable supporting documentation.

5.9.3. Deadline for Submission of Formal Protests

5.9.3.1. The OPWDD must receive formal protests concerning errors, omissions, or prejudice, including patently obvious errors in the bid specifications or documents at least ten (10) calendar days before the date set in the solicitation for receipt of bids.

5.9.3.2. The OPWDD must receive formal protests concerning a pending contract award within seven (7) calendar days after the protesting party ("protestor") knows or should have known of the facts that form the basis of the protest.

5.9.4. Review and Final Determination of Protests

- 5.9.4.1. Protests will be resolved through written correspondence. However, the protestor may request a meeting to discuss a formal protest, or the OPWDD may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the protestor or the OPWDD may elect to decline such a meeting.
- 5.9.4.2. Where further formal resolution is required, the Commissioner or Associate Commissioner shall designate an OPWDD employee (“designee”) to determine and undertake the initial resolution or settlement of any protest.
- 5.9.4.3. The designee will conduct a review of the records involved in the protest and provide a memorandum to the Commissioner or Associate Commissioner summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Commissioner or Associate Commissioner shall: (i) evaluate the procurement team’s findings and recommendations, (ii) review the materials presented by the protesting party and/or any materials required of or submitted by other Vendors, (iii) if necessary, consult with agency Counsel, and (iv) prepare a response to the protest.
- 5.9.4.4. A copy of the protest decision stating the reason(s) upon which it is based shall be sent to the protester or its agent within 45 calendar days of receipt of the protest, except that upon notice to the protester, such period may be extended. The protest decision is final and will be recorded and included in the procurement record.

5.10. STATE’S RESERVED RIGHTS

OPWDD reserves the right to:

- 5.10.1. reject any or all proposals received in response to the RFA;
- 5.10.2. withdraw the RFA at any time, at OPWDD’s sole discretion;
- 5.10.3. make an award under the RFA, in whole or in part;
- 5.10.4. disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFA;
- 5.10.5. seek clarifications and revisions of proposals;
- 5.10.6. use proposal information obtained through site visits, management interviews, and the State’s investigation of an Bidder’s qualifications, experience, ability, or financial standing, and any material or information submitted by the Bidder in response to OPWDD’s request for clarifying information, in the course of evaluation and/or selection under the RFA;
- 5.10.7. prior to the bid opening, amend the RFA specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- 5.10.7.1. NOTE: Any such modification issued on or before the due date for applications shall go to all entities that have requested a copy of this RFA, and to the entities on the original Bidders’ list, and may be posted to the OPWDD website and the New York State Contract Reporter website provided in Section 1.10 of this RFA; after that date (or an amended date, as the case may be), notification will be only to entities who have submitted proposals. OPWDD’s right to issue modifications of this RFA permits any addition or deletion of requirements as OPWDD may deem appropriate.

- 5.10.8. prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent RFA amendments;
- 5.10.9. change any of the scheduled dates;
- 5.10.10. eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
- 5.10.11. waive any requirements that are not material;
- 5.10.12. negotiate with the successful Bidder within the scope of the RFA in the best interests of the State;
- 5.10.13. conduct contract negotiations with the next responsible Bidder, should the agency be unsuccessful in negotiating with the selected Bidder;
- 5.10.14. utilize any and all ideas submitted in the proposals received;
- 5.10.15. require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors to ensure a full and complete understanding of an Bidder's proposal and/or to determine an Bidder's compliance with the requirements of the solicitation;
- 5.10.16. waive minor irregularities and/or omissions in bids, if in the best interest of the State;
- 5.10.17. in its sole discretion, reject illegible, incomplete, or vague bids;
- 5.10.18. resolicit offers from the vendor community by republishing and readvertising this RFA at any time; and
- 5.10.19. OPWDD shall have unlimited rights to disclose or duplicate, for any purpose whatsoever, all information or other work product developed, derived, documented or furnished by the Bidder under any Contract resulting from this RFA.

5.11. Public Officers Law

All Offerors and their employees must be aware of, and comply with, the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the proposal, each Bidder guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers and relationships involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in civil or criminal proceedings as authorized by law.



APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

October 2019

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors

shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, the Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on the Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, NY 12236.payment

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies

and affirms that it is the Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 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. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. The Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient.



The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division of Small Business
Albany, NY 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business

Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, the Contractor certifies in accordance with State Finance Law § 165-a 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” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

The Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. The 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. The Contractor also agrees that any proposed Assignee of this contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency 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 state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

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APPENDIX A SUPPLEMENT – 1: AGENCY SPECIFIC TERMS AND CONDITIONS

The parties to the attached Contract, Contract Enter Contract Number here, agree to be bound by the following, which are hereby made part of said Contract.

1. The Contractor shall not discriminate against any applicant for services for reasons based upon religion or religious belief. The Contractor shall not use any monies received from the State to benefit or inhibit a particular religion or religious belief.
2. The relationship of the Contractor to the State is that of an independent contractor and the officers and employees of the Contractor shall conduct themselves in a manner consistent with such status, shall neither hold themselves out as nor claim to be officers, employees, or agents of the State by reason thereof, and shall not make any claim, demand or application to or for any right of the State, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.
3. The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons or property, including death, arising out of or related to the services to be rendered by the Contractor. It shall indemnify and hold harmless the State and its officers and employees from any and all claims, suits, actions, damages and costs of every nature and description arising out of or related to the services to be rendered by the Contractor or the violation by the Contractor, its employees, servants, agents, or contractors, of any law, ordinance, rule or regulation in connection therewith.
4. Neither party shall be liable for losses, defaults, or damages under this Contract which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Contract, due to or because of acts of God, the public enemy, earthquake, floods, typhoons, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
5. If any term or provision of the Contract shall be found to be illegal or unenforceable, then, notwithstanding, the Contract shall remain in full force and effect and such term or provision shall be deemed stricken from the Contract.
6. The Contractor shall comply with all statutory requirements relating to the confidentiality of information obtained during the performance of the Contract.
7. The Contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.
8. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and the payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.
9. Unless otherwise provided, the Contract may be amended, modified, renewed, and/or renegotiated by written agreement of the parties which shall become effective upon approval by the Office of the State Comptroller.
10. Unless otherwise provided, the OPWDD may cancel the Contract without cause upon serving thirty (30) days' written notice on the Contractor. Cancellation by mutual agreement of all parties to the Contract will be allowed subject to documentation in writing.

11. No part of the Contractor's income or resources shall be used directly or indirectly for the benefit of, or payment to, any State employee for services provided under this Contract other than employees whose names are furnished to the OPWDD and no employee so identified shall receive any benefit or payment under this Contract without prior written approval by the OPWDD.
12. This Contract contains all the terms and conditions agreed upon by the parties and no statement or representation, oral or written, express or implied, shall be deemed to exist or to bind either party or to vary any of the terms and conditions of the Contract.
13. Where applicable, the Contractor shall maintain eligibility for reimbursement from any program that provides payment for services and shall apply for and obtain all funds available for the program from any public or private source. Upon request, the OPWDD shall assist in establishing the Contractor's eligibility for such funds.
14. The Contractor must comply with the provisions of Mental Hygiene Law Section 16.33 and Executive Law Section 845-b, the regulations related to criminal history record checks adopted by OPWDD in connection with the fingerprinting of certain individuals and the policies and procedures of OPWDD in connection therewith. In particular, any individual employed by or affiliated as a volunteer with a provider of services as defined in Section 1.03(5) of the Mental Hygiene Law who has regular and substantial unsupervised or unrestricted physical contact with people receiving services (such contact hereinafter referred to as "consumer contact") and who hereafter submits or who has submitted an application for employment or otherwise becomes or became affiliated with the Contractor on or after April 1, 2005 (such individual hereinafter referred to as "a subject party") shall be required to consent and submit to a criminal history record check. Upon the completion thereof, the Contractor shall deny or hold in abeyance employment or volunteer opportunities involving consumer contact to a subject party when directed to do so by OPWDD and in those instances the Contractor shall notify the subject party that his or her criminal history record information is the basis for such action taken by the Contractor.
15. Federal False Claims Act (31 USC Sections 3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, Sections 187-194) – the Contractor is bound by all of the related laws. The law requires that OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste and abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OPWDD must also provide its contractors with information about OPWDD's own policies and procedures for detecting and preventing waste, fraud and abuse. You can find detailed descriptions of these laws, their whistleblower protections and OPWDD's policies on the OPWDD website at www.opwdd.ny.gov. At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at www.omig.ny.gov to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud and abuse is available from the OPWDD Contract Management Unit, 5th Floor, 44 Holland Ave., Albany NY 12229-0001. As a contractor of OPWDD, you are required to participate in the reviews and audits described in OPWDD's policies, and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all your employees and to all of your contractors involved in performing work under your contract with OPWDD.
16. Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If this Contract is funded through the New York State Medicaid program, the following applies:

For Contractors

The Contractor represents that:

- (1) The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5;
- (2) The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a);
- (3) The New York State Medicaid Inspector General has not excluded the Contractor from participation in the New York Medicaid program under 18 NYCRR Part 515; and
- (4) No federal or State agency has otherwise excluded the Contractor from participation in the New York Medicaid program or excluded the Contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

If, during the term of this Contract, the Contractor is excluded from participation in a federal health care program or the New York Medicaid program, or is excluded from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this Contract shall be immediately terminated.

17. On February 12, 2007 the Diesel Emissions Reduction Act took effect as law. Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL"), it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirements of the law apply to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. As a contract vendor, the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and State or regional public authorities. Therefore, the Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this Contract will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the Bidder/Contractor.

18. Notices:

- (1) 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 for People With Developmental Disabilities (OPWDD)

Name: Marc L. Kleinhenz

Title: Director of Contracts and Grants

Address: 44 Holland Ave., Albany, NY 12229

Telephone Number: (518) 474-7719

E-Mail Address: Marc.L.Kleinhenz@opwdd.ny.gov

Contractor Name

Name: Enter Here

Title: Enter Here

Address: Enter Here

Telephone Number: Enter Here

E-Mail Address: Enter Here

- (2) 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.
- (3) 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.
19. 14 NYCRR Sec. 624.5(u)(2) An agency shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this Section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD.
20. General conditions relating to Article 15-A and Article 17B of the Executive Law are set forth in the following pages.

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APPENDIX A SUPPLEMENT – 2: MWBE Requirements and Procedures**PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES
REQUIREMENTS AND PROCEDURES****I. General Provisions**

- A. The Office for People With Developmental Disabilities (“OPWDD”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OPWDD, to fully comply and cooperate with OPWDD in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to OPWDD pursuant to the Contract and applicable law.

II. Contract Goals

- A. For purposes of this Contract, OPWDD hereby establishes an overall goal of 0% percent for MWBE participation, 0% percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 0% percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving

as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.]

D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:

1. Evidence of outreach to MWBEs;
2. Any responses by MWBEs to the Contractor’s outreach;
3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OPWDD with MWBEs; and,
5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

B. In performing the Contract, the Contractor shall:

1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to OPWDD within seventy-two (72) hours after the date of the notice by OPWDD to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OPWDD may require the Contractor or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement)
4. The Contractor’s EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

- c. The Contractor shall request each employment OPWDD, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment OPWDD, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Staffing Plan (Complete only if contract value is in excess of \$250,000)

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by OPWDD.

D. Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by OPWDD on a [MONTHLY for Construction/QUARTERLY for goods and services] basis during the term of the Contract.
 2. Separate forms shall be completed by the Contractor and any subcontractors.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall 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.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by OPWDD, through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to OPWDD, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by OPWDD. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OPWDD shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If OPWDD, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, OPWDD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to OPWDD by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where OPWDD determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to OPWDD liquidated damages.
- B. 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.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by OPWDD, the Contractor shall pay such liquidated damages to OPWDD within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

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**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) –
EQUAL EMPLOYMENT OPPORTUNITY (EEO)
POLICY STATEMENT**

By signing this Contract, the Awardee/Contractor/Organization agrees to adopt the following policies with respect to the project/program/product being developed or services rendered at the New York State Office for People With Developmental Disabilities.

MWBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from OPWDD and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of OPWDD, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall 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.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:	Reporting Entity:	Report includes Contractor's/Subcontractor's: ☐ Work force to be utilized on this contract ☐ Total work force
Offeror's Name:	Offeror's Address:	☐ Offeror ☐ Subcontractor
Subcontractor Name: _____		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male	Total Female	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American		Disabled (M) (F)		Veteran (M) (F)	
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary/Apprentices																	
Totals																	
PREPARED BY (Signature):								TELEPHONE NO.:						DATE:			
NAME AND TITLE OF PREPARER (Print or Type):								Submit completed with bid or proposal MWBE 101 (Rev 03/11)									

STAFFING PLAN INSTRUCTIONS

General instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

Instructions for completing:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'.
Contact the OMWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN / ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies);
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

APPENDIX A SUPPLEMENT – 3: SDVOB Requirements and Procedures

**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED
SERVICE- DISABLED VETERAN-OWNED BUSINESSES****I. Contract Goals**

- A. The OPWDD hereby establishes an overall goal of 6 percent for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the Directory of New York State Certified SDVOBs found at <https://online.ogs.ny.gov/SDVOB/search>.

Questions regarding compliance with SDVOB participation goals should be directed to OPWDD's SDVOB Administrator at minority.women.business.enterprise@opwdd.ny.gov.

Additionally, following Contract execution, the Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development (518) 474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. The Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the OPWDD.
- C. The OPWDD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of the OPWDD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, the Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to the OPWDD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the OPWDD to be inadequate, the OPWDD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) business days of notification by the OPWDD, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- E. The OPWDD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
- a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If the OPWDD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, the Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB Contract goals set forth above.
- G. The Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, the Bidder/Contractor shall contact OPWDD's SDVOB Administrator at minority.women.business.enterprise@opwdd.ny.gov for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the OPWDD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the OPWDD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. The Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the OPWDD but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the OPWDD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101), determines that the Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regard to such non-compliance, the OPWDD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals.

Waiver requests should be sent to the OPWDD.

IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to the Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by the Contractor, if any, scheduled by the OPWDD with certified SDVOBs whom the OPWDD determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), the Contractor is required to report Monthly SDVOB Contractor Compliance to the OPWDD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the Office of General Services' Division of Service-Disabled Veterans' Business Development's website: <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to the OPWDD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to OPWDD's SDVOB Administrator at minority.women.business.enterprise@opwdd.ny.gov.

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the Contract and the Contractor shall pay damages as set forth therein.

All forms are available at: <https://ogs.ny.gov/veterans/>

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SDVOB UTILIZATION PLAN

☐ Initial Plan ☐ Revised plan Contract/Solicitation #

INSTRUCTIONS: This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS **Certified** Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION		SDVOB Goals In Contract
Bidder/Contractor Name:	NYS Vendor ID:	%
Bidder/Contractor Address (Street, City, State and Zip Code):		

Bidder/Contractor Telephone Number:	Contract Work Location/Region:
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Contract Description/Title:

CONTRACTOR INFORMATION

Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
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Email Address:

If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form.

SDVOB Subcontractor/Supplier Name:	
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Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
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Address:	Email Address:
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Detailed description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%

SDVOB Subcontractor/Supplier Name:	
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Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
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Address:	Email Address:
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Detailed Description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%

FOR [Agency] USE ONLY

[Agency] Authorized Signature:	☐ Accepted	☐ Accepted as Noted	☐ Notice of Deficiency
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NAME (Please Print):	SDVOB %/\$	Date Received:	Date Processed:
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Comments:

NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION: The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/default.asp>

Note: All listed Subcontractors/Suppliers will be contacted and verified by [Agency].



ADDITIONAL SHEET

Bidder/Contractor Name:		Contract/Solicitation #	
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			
SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

Appendix A SUPPLEMENT – 4: Federal Assurances and Certifications

Certain of these assurances may not be applicable to your project or program. If you have questions, contact the Office of People with Developmental Disabilities (OPWDD). By signing and submitting this application, contract or contract amendment an authorized representative of the applicant or contractor asserts that the applicant or contractor:

1. Has the legal authority to apply for Federal Assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of the project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Executive Order Number 11246 as amended by E.O. 11375 relating to Equal Employment Opportunity, which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notifications of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
13. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
14. This contract is funded in whole or part with federal funds under the CDFA No 93.630. OPWDD is a pass-through entity of these federal funds. As a recipient of these federal funds, the Contractor may be determined, to be a sub-recipient of federal assistance. Sub-recipients of federal funds have the responsibility of reporting to OPWDD in addition to the sub-recipient's responsibility to file reports with the federal clearinghouse designated by Office of Management and Budget (OMB). If this contract will require the Contractor to expend \$750,000 or more of federal funds from this contract or in total with other contracts or grants of federal funds or assistance in the Contractor's fiscal year, regardless of the source of the funding, the Contractor is required to comply with the terms and provisions of the 2 CFR part 200, subpart F. The Contractor will notify OPWDD if it reasonably expects to expend the sum of \$750,000 of federally derived funds, in its fiscal year, as soon as it has notice of awards, grants or contracts totaling \$750,000 in federal funds, but in no event later than the close of the calendar year. The Contractor will have an audit performed pursuant to the requirements of 2 CFR part 200, subpart F and provide OPWDD with the required reports within 30 days of the Contractor's receipt of the independent audit report or within 9 months after the close of the Contractor's fiscal year, whichever event is sooner.
15. Certifies that Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not

apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The contractor/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions of children's services and all subgrantees shall certify accordingly.

16.A. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. (1) The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act (41 USC 702 et seq.), the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. (2) For grantees other than individuals, Alternate I applies. For grantees who are individuals, alternate II applies. (3) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. (4) Workplace identifications must include the actual address of buildings (or parts of buildings) or sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). (5) If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph four). (6) Definitions of terms in the Non-procurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes; Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance; Employee means the employee of a grantee directly engaged in the performance of work under a grant, including; (a) All direct charge employees; (b) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (c) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

16.B. Alternate I (Grantees Other Than Individuals). 1. The grantee certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (b) Establishing an ongoing drug-free awareness program to inform employees about; (1) the dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance

programs; and (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above; (d) Notifying the employee in the statement required by paragraph (a) above, that, as a condition of employment under the grant, the employee will (1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for violation of a criminal drug status occurring in the workplace no later than five calendar days after such conviction; (e) Notify the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant; (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted; (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (2) Requiring such a Federal, State, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f). For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices: Division of Grants Policy and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C., 20201

16.C. Alternate II (Grantees Who Are Individuals). 1. The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

17. Agrees that, a) By signing and submitting this proposal, the prospective primary applicant is providing the certification set out below. b) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. c) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. d) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstance. e) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of People with Developmental Disabilities for assistance in obtaining a copy of those regulations. f) The prospective primary participant agrees by submitting this proposal that, should the proposed covered

transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. g) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. h) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs. i) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. j) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

18. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

19. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874, as supplemented by Department of Labor regulations, 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States." The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

20. Davis-Bacon Act as amended (40 U.S.C. 276a to 276a-7) - When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act, 40 U.S.C. 276a to a-7, and as supplemented by Department of Labor regulations, 29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate of not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination issued by the Department of Labor in each solicitation and the award of the contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the HHS awarding agency.

21. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient (See also 45 CFR Part 93).
22. Debarment and Suspension (E.O.s 12549 and 12689) - Certain contracts shall not be made to parties listed on the non-procurement portion of the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." (See 45 CFR Part 76.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
23. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 CFR part 200, subpart F, "Audits of States, Local Governments, and Non-Profit Organizations."
24. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
25. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Rev 07/2020



APPENDIX B: Master Contract for Grants

The Procurement, the Bidder's Proposal, and the contract award resulting from this Request for Applications (RFA) are subject to and incorporate the terms and conditions of the Master Contract for Grants, provided in the Pre-Submission Uploads tab of this Opportunity.

APPENDIX C: INSURANCE REQUIREMENTS

During the term of the Contract, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required by this Section. All insurance required by this Section shall be written by companies that have an A.M. Best Company rating of “A-,” Class “VII” or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. The OPWDD, in its sole discretion, may accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Acceptance and/or approval by the OPWDD does not, and shall not, be construed to relieve the Contractor of any obligations, responsibilities, or liabilities under this Contract.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Vendor are specified in Section B-*Insurance Requirements* below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by OPWDD, all policies of insurance required by this Appendix shall be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** The Vendor shall provide OPWDD with a Certificate or Certificates of Insurance, in the form satisfactory to OPWDD (e.g., an ACORD certificate), with Solicitation response. Certificates shall reference the Solicitation or award number and shall name “The New York State Office of General Services, Procurement Services, Empire State Plaza, Corning Tower, 38th Floor, Albany New York, 12242” as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OPWDD and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Refer to this Solicitation and any Contract resulting from this Solicitation by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and Contain the following language in the Description of Operations / Locations / Vehicles section: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 (covering ongoing operations) and CG 20 37 04 13 (covering completed operations)), and General liability coverage is provided on the current

edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insured.

Only original documents (certificates and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

Except for (i) Data Breach and Privacy/Cyber Liability coverage, (ii) Technology Errors and Omissions, and (iii) Crime insurance coverages, OPWDD generally requires Vendors to submit only certificates of insurance and additional insured endorsements, although OPWDD reserves the right to request other proof of insurance. Vendors are requested to refrain from submitting entire insurance policies, unless specifically requested by OPWDD. If an entire insurance policy is submitted but not requested, OPWDD shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OPWDD does not constitute proof of compliance with the insurance requirements and does not discharge Vendors from submitting the requested insurance documentation.

- 4. Forms and Endorsements.** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Vendor shall provide, a Schedule of Forms and Endorsements with the Solicitation response and, upon request, all Forms and Endorsements, unless otherwise agreed to in writing by OPWDD. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Appendix. Only original documents or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.
- 5. Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Vendor's insurance.
- 6. Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Appendix at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation or at law or in equity.
- 7. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OPWDD. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Vendor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided at the time of Solicitation response.

8. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this Appendix and maintain the same in force during the term of any work performed by that Subcontractor.
9. **Waiver of Subrogation.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OPWDD upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
10. **Additional Insured.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insured: The People of the State of New York, the Office for People with Developmental Disabilities, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Additional Insured Endorsements shall be provided with Solicitation response and upon request to:

Contract Management Unit
Office for People With Developmental Disabilities
44 Holland Avenue, 5th Floor
Albany, NY 12229

A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Vendors who are self-insured, Vendor shall be obligated to defend and indemnify the above-named additional insured with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Vendor would have been required to pursuant to this Appendix had Vendor obtained such insurance policies.

As clarification, "The People of the State of New York" means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term "People" does not mean that the insurer is insuring all residents of New York State; rather, it means that the State government is being insured.

11. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided with Solicitation response and upon request.
12. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Vendor shall provide OPWDD with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

13. Policy Renewal/Expiration. Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OPWDD. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OPWDD, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OPWDD.

14. Deadlines for Providing Insurance Documents after Renewal or Upon Request. During the term of any Contract resulting from this Solicitation, as set forth herein, certain insurance documents must be provided to the OPWDD Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OPWDD as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days
- For schedules of forms and endorsements and all forms and endorsements: 60 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OPWDD, OPWDD shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements. Vendors and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of this Solicitation, or any Contract resulting from this Solicitation, or as required by law, whichever is greater.

Commercial General Liability Insurance. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

Minimum Insurance Coverage	
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Damage to Rented Premises	\$50,000
Medical Expenses	\$5,000

Aggregate limits shall apply on a per location basis, or as otherwise agreed to in writing by OPWDD. This aggregate limit applies separately to each location at which the insured works.

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in any Contract resulting from this Solicitation;
- Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation;
- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

1. **Comprehensive Business Automobile Liability Insurance.** Covering liability arising out of any automobile used in connection with performance under any Contract resulting from this Solicitation, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OPWDD. If, however, during the term of any Contract resulting from this Solicitation, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Appendix and provide proof of such coverage to OPWDD in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under any Contract resulting from this Solicitation, the Contractor must: (i) obtain Comprehensive Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, on a form provided by OPWDD. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Appendix and provide proof of such coverage to OPWDD in accordance with the insurance requirements of any Contract resulting from this Solicitation.

- 2. Data Breach and Privacy/Cyber Liability.** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the OPWDDs' systems due to the actions of the Contractor which results in unauthorized access to the OPWDD(s) or their data. Said insurance shall be maintained in the following limits:

Data Breach and Privacy/Cyber Liability		
		Minimum Insurance Coverage
Software		\$1,000,000
Hardware		\$1,000,000
Cloud *	Low Risk	\$2,000,000
Implementation		\$1,000,000
* See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.		

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims made basis, Vendor must include with Solicitation response an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

- 3. Technology Errors and Omissions.** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits:

Technology Errors and Omissions		
		Minimum Insurance Coverage
Software		\$1,000,000
Hardware		\$1,000,000
Cloud *	Low Risk	\$2,000,000
Implementation		\$1,000,000

Technology Errors and Omissions	
	Minimum Insurance Coverage
*See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.	

Said insurance shall provide coverage for damages arising from computer related services including but not limited to the following:

1. Consulting;
2. Data processing;
3. Programming;
4. System integration;
5. Hardware or software development;
6. Installation;
7. Distribution or maintenance;
8. Systems analysis or design;
9. Training;
10. Staffing or other support services; and
11. Manufactured, distributed, licensed, marketed or sold cloud computing services.

The policy shall include coverage for third party fidelity including cyber theft.

If the policy is written on a claims made basis, Vendor must include with Solicitation response an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

- 4. Crime Insurance.** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Crime Insurance. Said insurance shall be maintained in the following limits:

Crime Insurance		
		Minimum Insurance Coverage
Software		\$2,000,000
Hardware		\$2,000,000
Cloud *	Low Risk	\$2,000,000
Implementation		\$2,000,000
*See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories.		

Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.

Crime Insurance on a “loss sustained form” or “loss discovered form” providing coverage for Third Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Vendor’s and Contractor’s insurer as a result of this Solicitation must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Vendor and Contractor as a result of this Solicitation.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an OPWDD and their officers, agents, and employees as “Loss Payees” for all Third Party coverage secured. An Endorsement naming as Loss Payees “The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an OPWDD and their officers, agents and employees” shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

- 5. Workers’ Compensation Insurance & Disability Benefits Coverage.** Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in the termination of the Contract or any Contract renewal. A Vendor will not be awarded a Contract unless proof of workers’ compensation and disability insurance is provided to OPWDD.** Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to OPWDD at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers’ Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers’ Compensation Board’s website (www.wcb.ny.gov);

- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OPWDD by the Vendor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OPWDD upon request from the Vendor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Vendor's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OPWDD by the Vendor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

**APPENDIX D: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE AGREEMENT**

THIS Agreement is made by and between the **New York State Office for People With Developmental Disabilities** (OPWDD or Covered Entity) and **Contractor** (Business Associate), referred to collectively as “the Parties.”

WHEREAS, Business Associate provides certain services to OPWDD as described in the Contract and, in connection with such services, creates, uses or discloses for or on behalf of OPWDD certain individually-identifiable Protected Health Information (“PHI”), as defined in 45 CFR 160.103, relating to individuals served by OPWDD that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended, including Subpart D of the Health Information Technology for Economic and Clinical Health Act (HITECH) of Title XIII, Division A of the American Recovery and Reinvestment Act of 2009, and related regulations of 45 CFR Parts 160 through 164 (the HIPAA Privacy and Security Rules); and

WHEREAS, by reason of such activities, the Parties believe that Business Associate is a “business associate” of OPWDD as such term is defined in 45 CFR 160.103; and

WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA and HITECH, including requirements applicable to the relationship between a covered entity and its business associates;

NOW, THEREFORE, the Parties agree as follows:

1. Definitions.

- a. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. Specific definitions.
 - i. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the specific Business Associate listed in the first paragraph of this Agreement.
 - ii. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean OPWDD.
 - iii. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate.

- a. Business Associate agrees to:
 - i. not use or further disclose PHI other than as Required by Law, or as otherwise permitted or as required by this Agreement.
 - ii. use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity

pursuant to this Agreement in accordance with 45 CFR 164 (the HIPAA Security Rule), and to fully comply with the responsibilities of Business Associates as set forth in Sections 13401 and 13404 of the HITECH Act.

- iii. mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- iv. report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware. Further, Business Associate agrees to report to Covered entity any security incident, including a breach of Unsecured PHI as defined by the Security Rule, of which it becomes aware. In the event of such a breach:
 - 1) Business Associate shall promptly notify Covered Entity of the Breach when it is discovered. A breach is considered discovered on the first day on which Business Associate knows or should have known of such Breach. Such notification shall identify the Individuals, and their contact information, whose Unsecured PHI has, or is reasonably believed to have been, the subject of the Breach. Business Associate shall provide additional information concerning such breach to Covered Entity as requested.
 - 2) Covered Entity or Business Associate, as determined by Covered Entity, shall promptly notify individuals about a Breach of their Unsecured PHI as soon as possible but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall be in a form and format prescribed by Covered Entity and shall meet the requirements of Section 13402 of the HITECH Act.
 - 3) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- v. ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- vi. provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- vii. make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- viii. make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- ix. document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

- x. provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section 2(a)(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
 - b. Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that it is required to comply with the confidentiality, disclosure and re-disclosure requirements of 10 NYCRR Part 63 and to the provisions of Mental Hygiene Law Section 33.13 and 33.16 to the extent such requirements may be applicable.
 - c. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and the Security Rule to the same extent that Covered Entity is responsible for compliance with such Rules. Business Associate acknowledges that it is subject to civil and criminal penalties for violations of such provisions in the same manner as if Covered Entity violated such provisions.
- 3. Permitted Uses and Disclosures by Business Associate.
 - a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information (PHI):
 - i. to perform functions, activities, or services for, or on behalf of Covered Entity pursuant to the Contract provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
 - ii. for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - iii. for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate or any instances of which it is aware in which the confidentiality of the information has been breached.
 - iv. to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B). Data aggregation includes the combining of protected information created or received by a business associate through its activities under this Contract with other information gained from other sources.
 - v. to report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR 164.502(j)(1).
- 4. Obligations of Covered Entity.
 - a. Covered Entity shall notify Business Associate of any:
 - i. limitation(s) in the Notice of Privacy Practices Covered Entity produces in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - ii. changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's permitted or required uses or disclosures of PHI.

- iii. restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 5. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Covered Entity may permit Business Associate to use or disclose PHI for data aggregation or management and administrative activities of business Associate, if the Agreement includes provisions for same.
- 6. Remedies in Event of Breach. Business Associate hereby recognizes that irreparable harm may result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections 2 or 3 above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of such Sections. Furthermore, in the event of breach of Sections 2 or 3 by the Contractor, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.
- 7. Consideration. Business Associate acknowledges that the covenants and assurances it has made in the Agreement shall be relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.
- 8. Term and Termination.
 - a. Term. The Term of this Agreement shall be effective as of the Effective Date of this agreement and shall not terminate until all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of the Covered Entity is destroyed or returned to the Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in this Section.
 - b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide Business Associate with an opportunity to cure the breach and then terminate this Agreement and any other agreement between Covered Entity and Business Associate if Business Associate does not cure the breach within time period specified by the Covered Entity.
 - c. Effect of Termination.
 - i. Except as provided in paragraph 2 of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protection of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

9. Miscellaneous.

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. Agreement. The Parties agree to take such action as necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191, and any other applicable law.
- c. Survival. The respective rights and obligations of Business Associate under Section 6 and 8 of this Agreement shall survive the termination of this Agreement, as shall the rights of access and inspection of Covered Entity.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

10. Material Breach. The Parties acknowledge that in the event the Covered Entity learns of a pattern or activity or practice of the Business Associate that constitutes violation of a material term of this Agreement, then the Parties promptly shall take reasonable steps to cure the violation. If such steps are, in the judgment of the Covered Entity, unsuccessful, ineffective or not feasible, then the Covered Entity may terminate this Agreement upon written notice to the Business Associate, if feasible, and if not feasible, shall report the violation to the Secretary of HHS. Written notice may be transacted by certified or registered mail return receipt requested, facsimile transmission, personal delivery, expedited delivery service or via e-mail.

11. Law Governing Conflicts. This Agreement shall be enforced and construed in accordance with the laws of the State of New York. Jurisdiction of any litigation with respect to this Agreement shall be in New York, with venue in a court of competent jurisdiction in Albany County.

By submission of a proposal responding to this RFA, the Bidder understands and agrees to the terms and conditions of this Appendix.

Attachment 1: Attestations / Checklist (Administrative Proposal Submission)

The Attachment 1: Attestations / Checklist (Administrative Proposal Submission) is provided in the Grants Gateway Pre-Submission Uploads tab of the Opportunity: *Career-Services Vocational Training RFA*. Applicants must complete Attachment 1, scan or save to pdf, and upload it to the designated space provided. Please do not upload secured or password protected pdfs.

The Attachment 1: Attestations / Checklist (Administrative Proposal Submission) must be signed by an individual authorized to contractually bind the successful Bidder. Bidders must utilize this attachment to acknowledge the proposal requirements and attest that the Bidder meets these requirements and specifications. A checklist is also included with this attachment to assist the Bidder in meeting submission requirements for the Administrative Proposal, Technical Proposal, and Cost Proposal.

REVISED ATTACHMENT 2: COST PROPOSAL

PLEASE NOTE: The Attachment 2: Cost Proposal has been revised is now labeled, “**REVISED ATTACHMENT 2: COST PROPOSAL**”.

Applicants must use the REVISED ATTACHMENT 2: COST PROPOSAL provided in an email sent with the Responses to Questions, and has been uploaded to the [Procurement Opportunities | Office for People With Developmental Disabilities \(ny.gov\)](#) and [https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In \(ny.gov\)](https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In (ny.gov)).

Applicants submitting the incorrect Cost Proposal will be disqualified.

~~The Attachment 2: Cost Proposal is provided in the Grants Gateway Pre-Submission Uploads tab of the Opportunity: Career-Services Vocational Training RFA. Applicants **must** use the Cost Proposal provided.~~

The Attachment 2: Cost Proposal has been revised is now labeled, “**REVISED ATTACHMENT 2: COST PROPOSAL**” and has been uploaded to the [Procurement Opportunities | Office for People With Developmental Disabilities \(ny.gov\)](#) and [https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In \(ny.gov\)](https://www.nyscr.ny.gov/login.cfmNew York State Contract Reporter - Log In (ny.gov)) and emailed to the original Bidder’s List. Applicants submitting the incorrect Cost Proposal will be disqualified.

There is also a space available for the Budget Details in the Pre-Submission Uploads tab, as required in Section 3.3.1.1.

Applicants must complete the required forms, scan or save to pdf, and upload them to the Pre-Submission Uploads tab of the [Career-Specific Vocational Training Opportunity](#) in the Grants Gateway System in the designated space provided as required in Section 3.3. of this RFA. Please do not upload secured or password protected pdfs.

PLEASE NOTE: Applicants must enter “\$1” in the Other Expenditure Line of the Budget Properties tab in the Grants Gateway Application. Contract Total must not be entered.



The following attachments are available at the links provided below and also in the Grants Gateway Pre-Submissions Upload tab of the Career-Specific Vocational Training Opportunity.

Scanned copies (pdf preferred) of the following attachments must be signed and uploaded to the Pre-Submission Uploads tab of the Career-Specific Vocational Training Opportunity in the Grants Gateway System in the designated space provided. Please do not upload secured or password protected pdfs.

Attachment 3: Non-Collusive Bidding Certification (Clause 7, Appendix A of this RFA)
[attachment-3-noncollusive-bidding-certification.pdf \(ny.gov\)](#)

Attachment 4: Procurement Lobbying Law Certification of Compliance
[attachment-4-procurement-lobbying-law-certification-of-compliance.pdf \(ny.gov\)](#)

Attachment 5: Listing of Proposed Subcontractors
[Attachment 5: Listing of Subcontractors \(ny.gov\)](#)

Attachment 6: Encouraging Use of New York State Businesses in Contract Performance
[Attachment 6 Encouraging Use Of NY Bus](#)

Attachment 8: Vendor Assurance of No Conflict of Interest or Detrimental Effect
[Attacnebt 8 Bidder Assurance of No Conflict of Interest \(ny.gov\)](#)

Attachment 9: Executive Order 177 Anti-Discrimination Certification
[Attachment 9 Executive Order 177 Antidiscrimination \(ny.gov\)](#)

Attachment 10: Sexual Harassment Policy Certification
[Attachment 10 Sexual Harassment Policy Certification \(ny.gov\)](#)

Attachment 11: Certification Under Executive Order 16
[Attachment 11 Executive Order 16 \(ny.gov\)](#)

Attachment 13: Diversity Practices Questionnaire
[Attachment 13: Diversity Practices Questionnaire \(ny.gov\)](#)

Upon notification of selection, the tentative awardee must submit Form A in accordance with Section 3.1.12. of this RFA.

Attachment 7: Consultant Disclosure Reporting Requirements
[attachment-7-consultant-disclosure-reporting-requirements.pdf \(ny.gov\)](#)

This attachment must be used with the email submission of questions as required in Section 1.7 of this RFA.

Attachment 14: OPWDD Question Submittal Form
[Attachment 14 Question Submission Form \(ny.gov\)](#)

Please use the following attachment to indicate your intention to bid or not to bid, and email it as requested in Section 1.9 of this RFA.

Attachment 15: Notice of Intent to Bid or Not to Bid
[Attachment-15-notice-of-intent-to-bid-or-not-to-bid.pdf \(ny.gov\)](#)