# NEW YORK STATE OFFICE FOR THE AGING
# NEW YORK STATE OFFICE OF THE LONG TERM CARE OMBUDSMAN

## REQUEST FOR APPLICATIONS

## Regional Long Term Care Ombudsman Program

**Date of Issuance – April 29, 2015**

| | | |
|---|---|---|
| **Andrew M. Cuomo**<br>**Governor** | **Corinda Crossdale**<br>**Director** | **Mark C. Miller**<br>**NYS Ombudsman** |

# Regional Long Term Care Ombudsman Program

TABLE OF CONTENTS


| | PAGE # |
|---|---|
| IMPORTANT INFORMATION FOR PROSPECTIVE APPLICANTS | Pages 1-3 |
| APPLICANT MANDATORY MINIMUM QUALIFICATIONS | Page 3 |

| PART I: GENERAL INFORMATION FOR APPLICANTS | | Pages |
|---|---|---|
| 1) | Mission Statement | 3 |
| 2) | Statement of Purpose | 3 |
| 3) | Conflict of Interest | 3 |
| 4) | Issuing Office | 3 |
| 5) | Eligible Applicants | 3 |
| 6) | Contract Period | 4 |
| 7) | Anticipated Annual Budget and Funding from CMS | 4 |
| 8) | Time Table | 4 |
| 9) | Questions Concerning the RFA | 5 |
| 10) | Addendum to RFA | 5 |
| 11) | Submission of Application | 5 |
| 12) | Oral Presentations | 6 |
| 13) | Request for Supplemental Information | 6 |
| 14) | Incurred Costs | 6 |
| 15) | Disclosure of Application Contents | 7 |
| 16) | Limits on Executive Compensation | 7 |
| 16) | Participation of Minority and Women-Owned Business | 7 |
| 17) | Procurement Lobbying Act | 9 |
| 18) | Procurement Lobbying Act – Applicants Disclosure of Prior Non-Responsibility Determinations | 9 |
| 19) | Cancellation for Convenience | 10 |
| 20) | MacBride Fair Employment | 10 |
| 21) | Standard New York State Clauses | 10 |
| 22) | Agency Specific and Program Specific Clauses | 10 |
| 24) | Consultant Disclosure Legislation | 10 |
| 25) | Vendor Responsibility | 11 |
| 26) | Tax Provisions | 11 |
| 27) | New York State Department of Taxation and Finance Sales and Use Tax Requirements | 11 |
| 28) | Accessibility of State Agency Web-based Intranet and Internet Information and Applications | 12 |
| 29) | Information Security Breach and Notification Act | 12 |
| 30) | Piggybacking | 12 |
| 31) | Non-Collusive Bidding Certification | 12 |
| 32) | Notification of Award | 12 |
| 33) | Debriefings and Protests | 12 |
| 34) | Application Effective Period | 13 |
| 35) | Application Modification | 13 |
| 36) | Reimbursement | 13 |
| 37) | Review Panel and Evaluation Criteria | 13 |
| 38) | Contractor Responsibilities | 14 |
| 39) | Workers' Compensation Law | 14 |
| 40) | Iran Divestment Act | 14 |
| 41) | State Reserved Rights | 15 |


**Regional Long Term Care Ombudsman Program**

TABLE OF CONTENTS (continued)


PART II: CONTRACT TERMS — Pages 16-50

| | | |
|---|---|---|
| 1) | State of New York Master Contract for Grants | 16-41 |
| 2) | Agency and Program Specific Clauses (Attachment A-1) | 42-49 |
| 3) | Federal Specific Clauses (Attachment A-2) | 50 |
| 4) | Payment and Reporting Schedule (Attachment D) | 51-54 |

PART III: APPLICATION — Pages 55-63

| | | |
|---|---|---|
| 1) | Cover Page | 55 |
| 2) | Budget Summary and Supporting Budget Schedule (Attachment B) | 56-57 |
| 3) | Program Workplan (Attachment C) | 58-60 |
| 4) | Mandatory Minimum Qualifications | 61 |
| 5) | Evaluations Questions | 62-63 |

PART IV: ADDITIONAL REQUIRED DISCLOSURE DOCUMENTS — Pages 64-72

| | | |
|---|---|---|
| 1) | MacBride Fair Employment Principles Certification Form | 64 |
| 2) | NYS Taxation and Finance Contractor Certification – ST-220 | 65-66 |
| 3) | Procurement Lobbying Act - Applicant Disclosure of Prior Non-Responsibility Determinations | 67-68 |
| 4) | Vendor Responsibility Questionnaire | 69 |
| 5) | Consultant Disclosure Legislation – Consultant Reporting | 70-71 |
| 6) | Non-Collusive Bidding Certification | 72 |

PART V: ATTACHMENTS — Page 73-86

| | | |
|---|---|---|
| 1) | Prequalification Requirements | 73 |
| 2) | Encouraging Use of New York State Businesses in Contract Performance | 74 |
| 3) | Application Checklist | 75 |
| 4) | MWBE Subcontracting Utilization Plan | 76 |
| 5) | MWBE Letter of Intent to Participate | 77 |
| 6) | MWBE Work Force Employment Utilization | 78-79 |
| 7) | EEO Staffing Plan | 80-81 |
| 8) | MWBE/EEO Policy Statement | 82-83 |
| 9) | MWBE Subcontractor Request for Waiver Form | 84-85 |
| 10) | MWBE Goal Requirements Certification of Good Faith Efforts | 86 |

# IMPORTANT INFORMATION FOR PROSPECTIVE APPLICANTS

**Purpose**:

The New York State Office for the Aging (NYSOFA) and the NYS Office of the Long Term Care Ombudsman (LTCOP) seeks to designate regional sponsors in fourteen (14) regions of New York to oversee and administer the Long Term Care Ombudsman Program on a regional basis.

**Introduction and Background:**

LTCOP serves as an advocate and resource for persons who live in nursing homes, adult homes, and other licensed residential care facilities. Ombudsmen help residents and their families understand and exercise their rights to quality of care and quality of life. The program promotes and protects residents' health, safety, welfare, and rights by: receiving, investigating, and resolving complaints made by or on behalf of residents; by supporting resident and family councils; and by informing governmental agencies, providers, and the general public about issues and concerns impacting residents of long-term care facilities.

The Federal Older Americans Act (as amended) requires each state to establish an Office of the State Long Term Care Ombudsman and to employ a qualified, full-time person to serve as the State Ombudsman. The New York State LTCOP has been in existence since 1972. The primary activities of the ombudsman program include:

- Investigating and resolving long-term care facility residents' complaints;
- Providing services to help protect resident's health, safety, welfare and rights;
- Assuring residents have regular and timely access to services provided through New York State LTCOP;
- Promoting the development of resident and family councils in individual facilities;
- Training both paid and volunteer representatives of New York State LTCOP; and
- Monitoring, analyzing, and commenting on the development and implementation of federal, state, and local long term care laws and policies.

The New York State LTCOP advocates for nearly 160,000 residents in 1,519 long term care facilities across New York. These include 114,978 nursing home residents and 44,833 residents of adult care facilities, assisted living, and family-type homes.

In 2014, there were 906 certified volunteer ombudsmen providing a regular presence in facilities and helping protect the care, safety and rights of residents. These volunteers donated 115,000 hours.

In 2014, these local programs handled 2,215 complaints, achieving a successful resolution in 77% of cases; responded to 49,349 requests for information and consultation from residents, families, and caregivers; and responded to 4,696 requests for consultation from facilities.

LTCOP Regions

<u>LTCOP Region 2</u>

LTCOP Region 2 currently has 37 Skilled Nursing Facilities with approximately 8,136 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 55 with a total bed count of 3,996. This past program year 76 certified Ombudsman volunteers donated over 10,318 hours to the program while handling 182 complaints.

<u>LTCOP Region 3</u>

LTCOP Region 3 currently has 174 Skilled Nursing Facilities with approximately 43,943 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 191 with a total bed count of 10,595. This past program year 130 certified Ombudsman volunteers donated over 22,147 hours to the program while handling 195 complaints.

<u>LTCOP Region 4</u>

LTCOP Region 4 currently has 54 Skilled Nursing Facilities with approximately 8,560 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 70 with a total bed count of 4,799. This past program year 64 certified Ombudsman volunteers donated over 10,329 hours to the program while handling 44 complaints.

<u>LTCOP Region 5</u>

LTCOP Region 5 currently has 41 Skilled Nursing Facilities with approximately 6,063 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 100 with a total bed count of 2,718. This past program year 112 certified Ombudsman volunteers donated over 8,419 hours to the program while handling 316 complaints.

LTCOP Region 6

LTCOP Region 6 currently has 49 Skilled Nursing Facilities with approximately 6,968 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 72 with a total bed count of 3,000. This past program year 74 certified Ombudsman volunteers donated over 7,340 hours to the program while handling 251 complaints.

LTCOP Region 7

LTCOP Region 7 currently has 10 Skilled Nursing Facilities with approximately 1,027 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 24 with a total bed count of 461. This past program year 15 certified Ombudsman volunteers donated over 5,356 hours to the program while handling 68 complaints.

LTCOP Region 8

LTCOP Region 8 currently has 10 Skilled Nursing Facilities with approximately 1,398 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 14 with a total bed count of 285. This past program year 16 certified Ombudsman volunteers donated over 1,467 hours to the program.

LTCOP Region 9

LTCOP Region 9 currently has 27 Skilled Nursing Facilities with approximately 3,873 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 25 with a total bed count of 1,134. This past program year 32 certified Ombudsman volunteers donated over 7,270 hours to the program while handling 48 complaints.

LTCOP Region 10

LTCOP Region 10 currently has 26 Skilled Nursing Facilities with approximately 4,549 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 42 with a total bed count of 2,321. This past program year 33 certified Ombudsman volunteers donated over 3,600 hours to the program while handling 164 complaints.

LTCOP Region 11

LTCOP Region 11 currently has 19 Skilled Nursing Facilities with approximately 2,693 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 46 with a total bed count of 958. This past program year 22 certified Ombudsman volunteers donated over 2,543 hours to the program while handling 54 complaints.

LTCOP Region 12

LTCOP Region 12 currently has 10 Skilled Nursing Facilities with approximately 1,200 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 13 with a total bed count of 641. This past program year 8 certified Ombudsman volunteers donated over 900 hours to the program while handling 22 complaints.

LTCOP Region 13

LTCOP Region 13 currently has 62 Skilled Nursing Facilities with approximately 8,638 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 80 with a total bed count of 3,994. This past program year 118 certified Ombudsman volunteers donated over 9,990 hours to the program while handling 484 complaints.

LTCOP Region 14

LTCOP Region 14 currently has 10 Skilled Nursing Facilities with approximately 1,060 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 15 with a total bed count of 388. This past program year 18 certified Ombudsman volunteers donated over 2,313 hours to the program while

handling 14 complaints.

LTCOP Region 15

LTCOP Region 15 currently has 60 Skilled Nursing Facilities with approximately 8,923 beds. Board and Care facilities (adult homes, assisted living facilities, family type homes, and enriched housing) number 59 with a total bed count of 4,994. This past program year 87 certified Ombudsman volunteers donated over 7,022 hours to the program while handling 48 complaints.

## APPLICANT MANDATORY MINIMUM QUALIFICATIONS

**All applicants must fulfill all of the following mandatory minimum qualifications:**

1. The Sponsor and its employees and volunteers shall be free of "conflict of interest" (please see the conflict of interest section in Part 1, Section 3 of this RFA.

2. The Sponsor currently has or will have upon award of the contract, a presence and physical office space, in the region(s) for which it is applying.

3. The Sponsor is a public entity or a designated non-profit agency.

4. The Sponsor is physically located in New York State.

## PART I: GENERAL INFORMATION FOR APPLICANTS

### 1. MISSION STATEMENTS

The mission of NYSOFA is to help older New Yorkers to be as independent as possible for as long as possible through advocacy, development and delivery of person-centered, consumer-oriented, and cost-effective policies, programs and services which support and empower the older adults and their families, in partnership with the network of public and private organizations which serve them.

The Mission of LTCOP is to protect the health, safety, welfare, human and civil rights of people living in long term care facilities.

### 2. STATEMENT OF PURPOSE

NYSOFA and LTCOP seek to designate a local sponsor in fourteen (14) regions of New York to oversee and administer a local Long Term Care Ombudsman Program on a regional basis.

### 3. CONFLICT OF INTEREST

**Conflict of Interest:** The sponsor and its contractors and representatives shall be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the local Ombudsman serves. No state ombudsman, authorized representative, local ombudsman or immediate family member of such person shall have a direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care facility; have an ownership or investment interest (represented by equity debt, or other financial relationship) in a long term care facility or a long term care service; be employed by, or participate in the management of, a long term care facility; and receive remuneration (in cash or in-kind) under a compensation arrangement with an owner or operator of a long term care facility.

### 4. ISSUING OFFICE

This RFA is issued by NYSOFA and LTCOP which shall be the sole contact for information regarding its content.

### 5. ELIGIBLE APPLICANTS

LTCOP will accept applications from public and non-profit private entities. Consultants may be used. A resume is required for each Consultant that will receive 10% or more of the Total Budget.

Applicants must have a thorough knowledge of **advocacy for older New Yorkers in long term care facilities** and meet all of the "Applicant Mandatory Minimum Qualifications" as stipulated on pages 1 and 2 of this RFA.

6. CONTRACT PERIOD

The contract period shall be for a five (5) year period, commencing on **10/1/15** and ending **9/30/20**. When completing the budget pages as found in Part III-2., please prepare the budget for the first of the five (5) year contract amount.

7. ANTICIPATED ANNUAL BUDGET AND FUNDING FROM STATE AND FEDERAL FUNDS

The anticipated annual budget for this service in each region is as set forth below. In order to accommodate possible funding increases during the five year term of the contract, the total contract amount will reflect a 5% annual increase. Funding increases are not guaranteed, however the higher contract total will allow for awarding additional funds should they become available during the contract period. All applications will be evaluated based on best value. Applicants are to complete the application budget pages based on completing the scope of work as specified herein. The contract award is contingent upon the availability of sufficient program funding from New York State and the Federal Administration on Aging in the initial year and subsequent years of the contract period.

Applicants agree to utilize the state authorized data collection system, which is currently Harmony systems Ombudsmanager software, in order to meet NYSOFA reporting requirements. Applicants must budget enough funds annually to pay for software maintenance and updates. The current annual cost for this service is approximately $1,500.

Applicants are required to complete the administrative worksheet included in the Grants Gateway budget documents. Administrative costs may not exceed 15% of the total contract amount.

Applicants' budget MUST equal the funding amount of the Region(s) for which the Applicant is applying. If the applicant's budget does not equal the funding amount the application will receive a scoring penalty.

| Region | Year 1 Amount | Year 2 Amount | Year 3 Amount | Year 4 Amount | Year 5 Amount | Total Amount |
|---|---|---|---|---|---|---|
| 2 | 203,000 | 203,000 | 203,000 | 203,000 | 203,000 | 1,055,600 |
| 3 | 504,680 | 504,680 | 504,680 | 504,680 | 504,680 | 2,624,336 |
| 4 | 203,000 | 203,000 | 203,000 | 203,000 | 203,000 | 1,055,600 |
| 5 | 159,000 | 159,000 | 159,000 | 159,000 | 159,000 | 826,800 |
| 6 | 193,000 | 193,000 | 193,000 | 193,000 | 193,000 | 1,003,600 |
| 7 | 113,000 | 113,000 | 113,000 | 113,000 | 113,000 | 587,600 |
| 8 | 113,000 | 113,000 | 113,000 | 113,000 | 113,000 | 587,600 |
| 9 | 139,000 | 139,000 | 139,000 | 139,000 | 139,000 | 722,800 |
| 10 | 144,000 | 144,000 | 144,000 | 144,000 | 144,000 | 748,800 |
| 11 | 128,000 | 128,000 | 128,000 | 128,000 | 128,000 | 665,600 |
| 12 | 113,000 | 113,000 | 113,000 | 113,000 | 113,000 | 587,600 |
| 13 | 203,000 | 203,000 | 203,000 | 203,000 | 203,000 | 1,055,600 |
| 14 | 113,000 | 113,000 | 113,000 | 113,000 | 113,000 | 587,600 |
| 15 | 204,000 | 204,000 | 204,000 | 204,000 | 204,000 | 1,060,800 |

8. TIME TABLE*

| | |
|---|---|
| 04/29/15 | Release of Request for Applications |
| 05/20/15 | Last date to submit questions regarding RFA |
| 05/29/15 | Answers to questions issued/posted |
| 06/15/15 | Application packages must be received by 4:00 p.m. this date. Please see Part I -11 for more detail regarding submission of applications. |
| 07/15/15 | Anticipated date to notify successful applicant |
| 10/01/15 | Contract commences |
| 09/30/20 | Contract ends |

* NYSOFA reserves the right to revise any of these dates, as necessary.

9. QUESTIONS CONCERNING THE RFA

Prospective applicants may submit written questions to **Mark Miller**, who is the designated contact, by e-mail to **Mark.Miller@aging.ny.gov** or by fax to **(518) 474-7761** no later than **5 PM, 5/20/15**. No telephone calls will be accepted. **Each question should cite the particular RFA part, page and number to which it refers**. Questions received after the deadline will not be answered. A summary of the questions and answers will be sent to all prospective applicants that were mailed a copy of the RFA by NYSOFA. A summary of the questions and answers will also be posted on NYSOFA's website at http://www.aging.ny.gov/ContractsandGrants/index.cfm and LTCOP's website at http://www.ltcombudsman.ny.gov/. From the RFA issuance date until the selection, all contacts with NYSOFA and LTCOP concerning the contents of this RFA shall be made through **Mark Miller**.

10. ADDENDUM TO RFA

NYSOFA and LTCOP reserve the right to amend the RFA by providing addenda. The addenda will be mailed to all prospective applicants that are on NYSOFA's and LTCOP's mailing list. The addenda will also be posted on NYSOFA's website at http://www.aging.ny.gov/ and the LTCOP's website at http://www.ltcombudsman.ny.gov/. For prospective applicants not on NYSOFA's mailing list, it is your responsibility to check NYSOFA's website for the posting of addenda. If a prospective applicant has any questions regarding whether addenda was issued, please e-mail **Mark Miller** at **Mark.Miller@aging.ny.gov**.

11. SUBMISSION OF APPLICATION

A. Applications must be submitted online via the New York State Grants Gateway by the date and time posted on the cover of this RFA. Tutorials (training videos) for use of the Grants Gateway are available at the following web address (and upon user log in):
https://www.grantsgateway.ny.gov/IntelliGrants_NYSGG/module/nysgg/goportal.aspx .

To apply, log into the Grants Gateway and click on the View Opportunities button under View Available Opportunities. To get started, in the Search Criteria, enter the Grant Opportunity name listed above and select the Office for the Aging as the Funding Agency and hit the Search button. Click on the name of the Grant Opportunity from the search results grid and then click on the APPLY FOR GRANT OPPORTUNITY button located bottom left of the Main page of the Grant Opportunity.

In order to access the online application and other required documents such as the attachments, Applicants MUST be registered and logged into the Grants Gateway system in the user role of either a "Grantee" or a "Grantee Contract Signatory."

Reference materials and videos are available for Grantees applying to funding opportunities on the Grants Gateway. Please visit the Grants Reform website at the following web address: http://grantsreform.ny.gov/Grantees and select the "Grantee Quick Start Guide" from the menu. There is also a more detailed "Grantee User Guide" available on this page as well.

**Late applications will not be accepted. Applications will not be accepted via fax, e-mail, hard copy or hand delivery.**

B. The following sections of the Application contained in this RFA document (Part III) are required.

- ♦ Cover Page **(Certification must be signed)** (Part III, Number 1)
- ♦ Budget Summary and Supporting Budget Schedule (Part III, Number 2, Attachment B)
- ♦ Program Work Plan (Part III, number 3, Attachment C)
- ♦ Mandatory Minimum Qualifications (Part III, Number 4)
- ♦ Answers to Evaluation Questions (Part III, Number 5)
- ♦ Resume for the Project Liaison
- ♦ Resume for each Consultant that will receive 10% or more of the total budget

**NOTE**: The RFA can also be found at http://www.aging.ny.gov/ and http://www.ltcombudsman.ny.gov/.

**An incomplete submission will be scored accordingly based upon the documents received. NYSOFA will not contact applicants regarding missing sections.**

The following documents included in the RFA package will form the basis of the contract with NYSOFA:

- ♦ State of New York Master Contract for Grants (Part II -1)
- ♦ Agency and Program Specific Clauses (Part II-2, Attachment A-1)
- ♦ Federal Specific Clauses (Part II-3, Attachment A-2)
- ♦ Budget Summary and Supporting Budget Schedule (Part III-2, Attachment B)
- ♦ Program Workplan (Part III-3, Attachment C)
- ♦ Payment and Reporting Schedule (Part II-4, Attachment D)

C. Other documents that must be submitted:

- ♦ MacBride Fair Employment Principles Certification Form (* see note below)
- ♦ NYS Taxation and Finance Contractor Certification - ST-220 CA and ST-220 TD (* see note below)
- ♦ Consultant Disclosure Legislation – Consultant Reporting forms (* see note below)
- ♦ Procurement Lobbying Act–Applicants Disclosure of Prior Non-responsibility Determination (* see note below)
- ♦ Vendor Responsibility Questionnaire (* see note below)
- ♦ Consultant Disclosure Reporting
- ♦ Non-Collusive Bidding Certification (* see note below)
- ♦ Encouraging Use of New York State Businesses in Contract Performance (*see below)

* The MacBride Fair Employment Principles Certification Form, Consultant Disclosure Legislation – Consultant Reporting forms, Applicant Disclosure of Prior Non-responsibility Determination, Vendor Responsibility Questionnaire, the NYS Taxation and Finance Contractor Certification - ST-220 and Non-Collusive Bidding Certification forms should be submitted with the application. Although these documents are not part of the application package, they are required in order to enter into a contract with the successful applicant. Please refer to Part IV for specific submission instructions for each of these disclosure documents. Regarding forms that must be received by NYSOFA, please submit an original with original signature and one copy.

D. Minority and Women-Owned Business Enterprise (MWBE) and Equal Employment Opportunity (EEO) Forms (Attachments V-3 through V-10) – As part of the application, applicant must include the following forms:

- ♦ MWBE Subcontracting Utilization Plan (if applicable)
- ♦ MWBE Letter of Intent to Participate (if applicable)
- ♦ MWBE Work Force Employment Utilization (if applicable)
- ♦ EEO Staffing Plan
- ♦ MWBE/EEO Policy Statement
- ♦ MWBE Subcontractor Request for Waiver Form (if applicable)
- ♦ MWBE Goal Requirements Certification of Good Faith Efforts

These forms are required to ensure that the applicant is in full accord with the aims and efforts of the State of New York to promote equal opportunity for all persons, and to promote equality of economic opportunity for minority group members and women who own business enterprises, and to ensure there are no barriers, through active programs, that unreasonably impair access by MWBEs to state contracting opportunities. It is understood that the extent of the applicant's MWBE subcontracting plans may not be known at the point of submission of the application. The applicant(s) selected for an award may be required to resubmit the EEO Staffing Plan when subcontracting activities are finalized.

## 12. ORAL PRESENTATIONS

NYSOFA reserves the right to require any applicant under final consideration to make an oral presentation on their application at the NYSOFA office in Albany.

## 13. REQUEST FOR SUPPLEMENTAL INFORMATION

During the evaluation period, applicants may be requested to present supplemental information to clarify any part of their application. Such information must be submitted in writing and will be included as a formal part of the applicant's application.

## 14. INCURRED COSTS

The State of New York is not liable for any costs incurred prior to the approval of a contract by the Office of the State Comptroller (OSC).

15. DISCLOSURE OF APPLICATION CONTENTS

Except to the extent permitted by law, applications will not be disclosed, except for purposes of internal agency evaluation, prior to approval by the Office of the State Comptroller of the resulting contract. All materials submitted become the property of the State and may be returned at the State's discretion. Submitted applications may be reviewed and evaluated by any person designated by NYSOFA, other than one associated with a competing applicant. NYSOFA reserves the right to use any and all ideas presented in any response to the RFA. Selection or rejection of an application does not affect this right.

If an applicant believes that any information in their application constitutes a trade secret, they may request that such information not be disclosed if requested by a member of the public pursuant to the State Freedom of Information Law. In these instances, the applicant shall submit with its application a letter specifically identifying by page number, line, or other appropriate designation, that information which is a trade secret and explaining in detail why such information is a trade secret. Failure by an applicant to submit such a letter with its application identifying trade secrets shall constitute a waiver by the applicant of any rights it may have under Section 87 of the Public Officers Law relating to protection of trade secrets.

16. LIMITS ON ADMINISTRATIVE EXPENSES AND EXECUTIVE COMPENSATION

NYSOFA has adopted a regulation (Title 9 NYCRR Part 6656) implementing Executive Order No. 38 providing for a limit on administrative expenses and executive compensation of providers of program services in order to meet the State's ongoing obligation to ensure the proper use of taxpayer dollars and the most effective provision of such services to the public. Effective July 1, 2013, covered providers must spend no more than a specified percentage of covered operating expenses funded with State funds or State-authorized payments on administrative expenses. In addition, a covered provider may not use State funds or State-authorized payments for executive compensation given directly or indirectly to a covered executive in an amount greater than $199,000. These limits apply to covered providers (including subcontractors) receiving State funds or State-authorized funds unless a waiver of the limit on administrative expenses and/or limit on executive compensation has been granted. Covered providers are required to submit a completed EO#38 Disclosure Form for each covered reporting period within 180 days following the period. Additional information about Executive Order 38 can be found on the E.O. 38 website (http://executiveorder38.ny.gov/).

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

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

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

**Business Participation Opportunities for MWBEs**

For purposes of this procurement, NYSOFA hereby establishes an overall goal of 30% for MWBE participation with a recommended breakdown of 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation. Contractors are encouraged to fulfill the suggested 15% goal for both MBE and WBE vendors; however, strict adherence to the suggested MBE and WBE percentages is not mandatory as long as the overall 30% goal is met. A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that NYSOFA may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at www.esd.ny.gov/mwbe.html.
For guidance on how NYSOFA will determine a Selected Applicant's "good faith efforts," refer to 5 NYCRR §142.8.

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

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

By submitting a bid or application, a bidder on the Contract ("Bidder" also referred to as Applicant in this RFA) agrees to submit the following documents and information as evidence of compliance with the foregoing:

A. Bidders are required to submit a MWBE Utilization Plan on Form MWBE 103 with their bid or application. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to NYSOFA.

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

C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to NYSOFA, Sandy Harvey, 2 Empire State Plaza, 3rd Floor, Albany, NY 12223, (518) 408-1709, Fax (518) 474-7949, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by NYSOFA to be inadequate, NYSOFA shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form MWBE 104. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or application.

D. NYSOFA may disqualify a Bidder as being non-responsive under the following circumstances:
   a) If a Bidder fails to submit a MWBE Utilization Plan;
   b) If a Bidder fails to submit a written remedy to a notice of deficiency;
   c) If a Bidder fails to submit a request for waiver; or
   d) If NYSOFA determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to NYSOFA, but must be made no later than prior to the submission of a request for final payment on the Contract.
Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report on Form MWBE 105 to NYSOFA by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**Equal Employment Opportunity Requirements**

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

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form MWBE 101) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to NYSOFA, a workforce utilization report (MWBE 102) identifying the workforce actually utilized on the Contract if known.

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

shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

18. PROCUREMENT LOBBYING ACT

Pursuant to State Finance Law §139-j and §139-k, this RFA includes and imposes certain restrictions on communications between NYSOFA and an applicant during the procurement process. An applicant is restricted from making contacts from the issuance of the RFA through final award and approval of the contract by NYSOFA and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a).

Designated staff, as of the date hereof, is identified in Part I – 9. (Questions concerning the RFA). NYSOFA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the applicant pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the applicant is debarred from obtaining governmental Procurement Contracts.

Further information about these requirements can be found:
http://www.ogs.ny.gov/ACPL/

NYSOFA shall make its determinations regarding the awarding of contracts solely on the merits of the applications, free from any improper lobbying influence.

The State prohibits the payment of any costs for outside lobbyists in the proposed contract price. Any application which includes in the contract price any payment for outside lobbyists shall result in the immediate exclusion of such application from further consideration.

A public notice for this solicitation has been issued; therefore, any contact concerning this RFA to other than designated staff by any employee, agent or consultant of an applicant (i.e., firms or individuals which submit an application) is prohibited, except as follows:

- In those instances where the contact is in response to NYSOFA and is for the sole purpose of providing information to NYSOFA personnel to assist them in understanding and assessing the qualities, characteristics or anticipated performance of a product or service offered by an applicant, the designated NYSOFA contact person may contact or authorize other appropriate NYSOFA staff to have contact with an applicant (i.e., those employees, agents or consultants of an applicant who are qualified by technical and professional training, education or experience to explain, demonstrate or clarify the characteristics and advantages of a product or service offered). These instances include the request for an oral presentation (See Part I - 12.) or the request for supplemental information (see Part I - 13.).

- After the evaluation of applications and selection of the contractor has been completed, appropriate contacts may be made between NYSOFA staff and the successful applicant for the purpose of negotiating the terms of the contract.

As indicated in Part I - 9. (Questions regarding the RFA), the designated contact for the purposes of this RFA is **Mark Miller**. Questions concerning the procurement lobbying policy or other issues related to contract integrity should be directed to Laura Beck, Procurement Integrity Officer for NYSOFA, at (518) 408-1103.

The submission of an application by an applicant constitutes their understanding of, and agreement to, comply with the State's policies relating to improper lobbying influence.

19. PROCUREMENT LOBBYING ACT – APPLICANTS DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9).

In accordance with State Finance Law §139-k, an offerer (hereinafter referred to as applicant) must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental

Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer (applicant)” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an applicant fails to timely disclose accurate or complete information regarding the above non-responsibility determination.

In accordance with law, no procurement contract shall be awarded to any applicant that fails to disclose in a timely manner accurate or complete information under this section, unless a finding is made that the award of the procurement contract to the applicant is necessary to protect public property or public health safety, and that the applicant is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its RFA or bid documents or specifications or contract documents, as applicable, for procurement contracts. The Applicant Disclosure of Prior Non-Responsibility Determinations form (see Part IV – 3.) is to be completed and submitted by the individual or entity seeking to enter into a procurement contract. It shall be submitted to NYSOFA.

Applicants must still complete and submit the Vendor Responsibility Questionnaire as discussed in Part I – 25. and Part IV- 4. of this RFA.

20. CANCELLATION FOR CONVENIENCE

NYSOFA retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least thirty (30) days notice of its intent to cancel. This provision should not be understood as waiving NYSOFA's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing State agreements, which are subject to the same 30 day discretionary cancellation or cancellation for cause by the respective user Agencies.

21. MACBRIDE FAIR EMPLOYMENT

The provisions of the Nondiscrimination in Employment in Northern Ireland: MacBride Fair Employment Principles Certification (see Part IV-1.) will be a part of the final contract and all applicants must fully complete and sign.

22. STANDARD NEW YORK STATE CLAUSES

The Master Contract for Grants, which is attached hereto, will be made a part of the final contract and the parties shall agree to be bound by the terms and conditions thereof.

23. AGENCY SPECIFIC AND PROGRAM SPECIFIC CLAUSES

The provisions of Attachments A-1 and A-2 (Part II-2. and Part II-3.), which is attached hereto, will be made a part of the final contract and the parties shall agree to be bound by the terms and conditions thereof.

24. CONSULTANT DISCLOSURE LEGISLATION

Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State. Information on this legislation can be found at http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/18.htm. The winning bidder for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

Winning bidders must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to NYSOFA, the Office of the State Comptroller, and Department of Civil Service. Employment categories with specific occupational classifications can be found at http://online.onetcenter.org/find/ under Browse by Job Family.

Both of these consultant disclosure forms are included in Part IV-5.of this RFA.

## 25. VENDOR RESPONSIBILITY

Procurement laws and guidelines require the award of New York State contracts to responsible contractors. Vendor responsibility generally means that a selected applicant has the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract. It is the State's responsibility to evaluate the responsibility of a prospective contractor. A responsibility determination, wherein the State determines that it has reasonable assurances that a contractor is responsible, is an important part of the procurement process, promoting fairness in contracting and protecting a contracting State agency and the State of New York against failed contracts.

The following factors are considered in making a responsibility determination:

- legal authority to do business in New York State
- integrity
- capacity - both organizational and financial
- previous performance

The contracting State agency is required to conduct a review of a prospective contractor to provide reasonable assurances that the contractor is responsible. The Office of the State Comptroller (OSC) maintains the VendRep system, which allows business entities (vendors) to enter and maintain their Vendor Responsibility Questionnaire (VRQ) information in a secure, centralized database. It is recommended that all potential vendors prepare their VRQ on-line as follows: http://www.osc.state.ny.us/vendrep/vendor_index.htm and do so at the time of application submission. For direct VendRep user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672, or by e-mail at helpdesk@osc.state.ny.us .

If a potential vendor opts to use the paper copy, the form is found at http://www.osc.state.ny.us/vendrep/forms_vendor.htm on the OSC website. This information is also included in Part IV – 4. of this RFA.

## 26. TAX PROVISIONS

Purchases made by the State of New York are not subject to state or local sales taxes or federal excise taxes. The official State of New York Voucher for materials, equipment, supplies and services is sufficient evidence to exempt the transaction from sales tax under section 1116 (a)(1) of the Tax Law.

## 27. NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE SALES AND USE TAX REQUIREMENTS

Section 5-a of the Tax Law, as amended and effective April 26, 2006 requires certain contractors awarded certain contracts valued at more than $100,000 to certify to the NYS Department of Taxation and Finance (hereinafter referred to as Tax and Finance) that they are registered to collect New York State and local sales and compensating use taxes if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, for the four (4) completed sales tax quarters in which the certification is made. In addition, contractors must certify to Tax and Finance that each affiliate and subcontractor exceeding such sales threshold during the period previously indicated, is registered to collect New York State and local and compensating tax.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to Tax and Finance that each affiliate and subcontractor exceeding such sales threshold is registered with Tax and Finance to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to a bidder meeting the registration requirements but who is not so registered in accordance with the law.

The applicant that is awarded the contract as a result of this RFA will be required to complete and submit to Tax and Finance the Contractor Certification Form, ST-220-TD (Part IV-2.). The selected Vendor must also submit the Contractor Certification to Covered Agency Form, ST-220–CA (Part IV-2.) to NYSOFA certifying that they filed Form ST-220–TD and that the information contained on Form ST-220-TD was correct and complete as of the date it was filed. Vendors 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 Tax's web site: http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf

Vendors may call Tax and Finance at 1-800-972-1233 for any and all questions relating to Tax Law §5-a and relating to a company's registration status with Tax and Finance. For additional information and frequently asked questions, please refer to Tax's web site: http://www.tax.ny.gov/.

28. ACCESSIBILITY OF STATE AGENCY WEB-BASED INTRANET AND INTERNET INFORMATION AND APPLICATIONS

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by NYSOFA, contractor or other and the results of such testing must be satisfactory to NYSOFA before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

29. INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization.

Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation.

When notification is necessary, Section 899-aa of the GBL requires that the State entity or person or business conducting business in New York must also notify the following New York State agencies: the offices of the New York Attorney General; the NYS Division of State Police; and the Department of State's Division of Consumer Protection.

Note: State entities subject to section 208 of the State Technology Law that experience breaches of computerized data which includes private information must file notices of with the New York Attorney General; Department of State's Division of Consumer Protection; and the Office of Information Technology Services' Enterprise Information Security Office.

Information relative to the law and the notification process is available at: http://its.ny.gov/eiso/breach-notification

30. PIGGYBACKING

New York State Finance Law section 163(10)(e) (see also http://www.ogs.state.ny.us/procurecounc/pgbguidelines.asp ) allows the Commissioner of the NYS Office of General Services (OGS) to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

31. NON-COLLUSIVE BIDDING CERTIFICATION

Section 139-d of the State Finance Law requires each applicant to sign a non-collusive bidding certification. This certification may be found in Part IV – 6.

32. NOTIFICATION OF AWARD

After evaluation and selection of the successful applicant, the unsuccessful applicants will be notified in writing that their application was not selected. **The successful applicant's press releases pertaining to this program shall not be made public without prior written approval by NYSOFA and LTCOP.**

33. DEBRIEFINGS AND PROTESTS

As noted above, the State shall provide all applicants with written notice of the contract award. Unsuccessful applicants may request and are entitled to a debriefing. Any interested party may protest the contract award. The notice of contract award will state the method of any debriefing and the date by which a protest may be filed.

The complete Protest and Debriefing Procedure for Competitive Awards by the New York State Office for the Aging can be found at: http://www.aging.ny.gov/contractsandgrants/protestprocedure.cfm. A copy of the procedure will be provided to any applicant upon request.

34. APPLICATION EFFECTIVE PERIOD

All Applications received in response to this RFA will remain in effect for at least ninety (90) days following the final date for submission of Applications.

35. APPLICATION MODIFICATION

Should a successful applicant wish to significantly modify its program activities after notification of the award, NYSOFA reserves the right to rescind the award.

36. REIMBURSEMENT

All claims for payment shall be submitted in accordance with procedures as set forth in the Payment and Reporting Schedule (Attachment D). The successful applicant will be eligible for a 25 percent advance payment upon execution of a contract between the successful applicant and NYSOFA.

For-profit entities are not eligible for an advance. Under no circumstances will any contract be valid and enforceable until approved by the Office of the State Comptroller. All subsequent payments will be made on a reimbursement basis following expenditures for approved costs in accordance with the contract budget (Part III-2 - Attachment B).

Reimbursement vouchers must be submitted on at least a quarterly basis. If an advance payment is made, it will be recouped against amounts due on reimbursement claims submitted during the latter part of the contract period. The final claim for payment must be submitted within sixty (60) days following the end of the contract period.

37. REVIEW PANEL AND EVALUATION CRITERIA

Selection of the successful application will be done by a review panel designated by NYSOFA. The applications will be rated on each of the following criteria:

1. Please indicate the region or regions for which you are applying.

2. Describe any experience your agency has in advocating for the aging and disabled population. Include a description of the types of issues handled and outreach conducted or services provided to minority or emerging populations. Also describe your agency's relationship or interaction with the Offices for Aging in the region(s) for which you are applying.

3. Describe your agency's experience recruiting, training, and managing volunteers. Include any experience recruiting volunteers from diverse backgrounds.

4. Describe how your agency plans to implement the mission and each of the functions of the Long Term Care Ombudsman Program listed below:

    A. Provide services to protect the health, safety, welfare and rights of long-term care residents.

    B. Ensure residents in the service area of the region have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance.

    C. Identify, investigate, and resolve complaints made by or on behalf of residents that relate to their health, safety, welfare or rights.

    D. Represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare and rights of residents.

    E. Review, and if necessary, comment on any existing or proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and, facilitate the ability of the public to comment on the laws, regulations, policies and actions.

    F. Support the development of resident and family councils.

5. Describe how your agency's mission and core functions will complement the mission of the Long Term Care Ombudsman Program.

6. Describe any experience your agency has using web based data collection and reporting systems to generate reports and analyze data trends.

7. LTCOP requires local designees to provide annual certification training and on-going in-servicing. Describe your agency's experience and capacity for training volunteers, including your agency's ability to obtain appropriate space to conduct the training and in-service events.

8. The program handles confidential information and files. Describe the steps your agency will take to protect confidential files and provide an environment where staff can have confidential conversations with residents and others seeking assistance from the program. Describe the office space your agency will be dedicating for use by the LTCOP program staff.

9. Describe your agency's capacity for providing dedicated staff time to the program. How many staff will be employed and how will the staff time be divided or allocated? What experience and/or qualifications do/will these staff possess? Please include resumes for existing staff you plan to dedicate to the program. NOTE: Currently the aspirational standard recommended by the National Institute of Medicine is one full-time ombudsman for every 2,000 long-term care beds.

10. Describe your agency's experience with the NYS accounting/vouchering processes. Does your agency have staff dedicated to fiscal operations?

11. Describe your agency's current operating budget, sustainability plan for supporting ombudsman program operations and your ability to meet standard accounting practices.

38. CONTRACTOR RESPONSIBILITIES The following are the expectations for the delivery of service under this contract:

Provide services to protect the health, safety, welfare and rights of long-term care residents.

Ensure residents in the service area of the region have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance.

Identify, investigate, and resolve complaints made by or on behalf of residents that relate to their health, safety, welfare or rights.

Represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare and rights of residents.

Review, and if necessary, comment on any existing or proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and, facilitate the ability of the public to comment on the laws, regulations, policies and actions.

Support the development of resident and family councils.

39. WORKERS' COMPENSATION LAW

The Workers' Compensation Law requires that the State obtain evidence that all contracting organizations maintain the required Workers Compensation and Disability Benefits Insurance for their employees. The successful applicant will need to supply NYSOFA with a copy of form C-105.2 Certificate of Workers' Compensation Insurances and a copy of form DB-120.1 Disability Benefits Insurance or a copy of form CE-200, Attestation of Exemption. These forms can be obtained from your insurance carrier. The name and address of NYSOFA must appear as the entity requesting proof of coverage (listed as the certificate holder) on form C-105.2 and DB-120.1.

40. IRAN DIVESTMENT ACT

By submitting a bid/Application in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers Pursuant to the New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on

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

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

41. STATE RESERVED RIGHTS

New York State Procurement Rights.

NYSOFA reserves the right to:

1. Prior to the application review, amend the RFA specifications to correct errors or oversights, or to supply additional information, as it becomes available;

2. Prior to the application review, direct applicants to submit proposal modifications addressing subsequent RFA amendments;

3. Change any of the scheduled dates;

4. Reject applications that fail to meet mandatory requirements;

5. Withdraw the RFA at any time, at the agency's sole discretion;

6. Eliminate any specifications that cannot be complied with by all of the prospective applicants;

7. Disqualify any applicants whose conduct and/or application fails to conform to the requirements of the RFA;

8. Require clarification at any time during the application process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an applicant's application and/or to determine an applicant's compliance with the requirements of the application;

9. Use application information obtained through site visits, management interviews and the State's investigation of a applicant's qualifications, experience, ability or financial standing, and any material or information submitted by the applicant in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFA;

10. Make an award under this RFA in whole or in part; and

11. Utilize any and all ideas submitted in the proposals received.

**STATE OF NEW YORK**
**MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

**WITNESSETH:**

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

**STANDARD TERMS AND CONDITIONS**

## I. GENERAL PROVISIONS

**A. Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

**B. Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds $50,000 (or $85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

***Budget Changes*:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

**C. Order of Precedence:**

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions

2. Modifications to the Face Page

3. Modifications to Attachment A-2[1], Attachment B, Attachment C and Attachment D

4. The Face Page

5. Attachment A-2[2], Attachment B, Attachment C and Attachment D

6. Modification to Attachment A-1

7. Attachment A-1

8. Other attachments, including, but not limited to, the request for proposal or program application

**D. Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**E. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

**F. Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the

[1] To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

[2] To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

**G. Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**H. Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

**I. Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

**J. Notice:**

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:

   a) by 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.

2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).

3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).

4. 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 e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior 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 the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

**K. Service of Process:** In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon 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. 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 shall have thirty (30) calendar days after service hereunder is complete in which to respond.

**L. 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 the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master 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 OSC.

**M. Indemnification:** The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

**N. Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master 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 shall be considered to be 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 State Agency and with the concurrence of OSC, where the original contract was subject to OSC'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 the merged 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 the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**O. Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

**P. No Arbitration:** Disputes involving the Master 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.

**Q. Secular Purpose:** Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

**R. Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

**S. Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its 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 it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.[3]

**T. Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

**U. Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief 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 binding certification on the Contractor's behalf.

**V. Federally Funded Grants and Requirements Mandated by Federal Laws:** All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent

[3]As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

that the Master Contract is funded, in whole or part, with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

## II. TERM, TERMINATION AND SUSPENSION

**A. Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

**B. Renewal:**

**1.** ***General Renewal*:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

**2.** ***Renewal Notice to Not-for-Profit Contractors*:**

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

## C. Termination:

### 1. *Grounds*:

a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.

c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

### 2. *Notice of Termination*:

a) Service of notice: Written notice of termination shall be sent by:

(i) personal messenger service; or

(ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

**3**. ***Effect of Notice and Termination on State's Payment Obligations*:**

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

**4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property*:**

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

**D. Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time

as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

## III. PAYMENT AND REPORTING

### A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.

2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.

3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.

4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.

5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.

6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.

7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

**B. Advance Payment and Recoupment:**

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).

2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).

3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.

4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.

5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

**C. Claims for Reimbursement:**

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:[4] Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:[5] Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:[6] Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:[7] The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service

[4] A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.
[5] Fee for Service is a rate established by the Contractor for a service or services rendered.
[6] Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.
[7] Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

reports shall be used to determine funding levels appropriate to the next annual contract period.

h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:[8] Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.

4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.

5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.

6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.

7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

**D. Identifying Information and Privacy Notification:**

[8] Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, 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 Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. 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 principle 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. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This 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, New York, 12236.

**E. Refunds:**

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

**F. Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

**G. Program and Fiscal Reporting Requirements:**

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.

(ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

(iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

(iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).

(v) *Consolidated Fiscal Report* (CFR): The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

(ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

**H. Notification of Significant Occurrences:**

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

## IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

**A. Contractor as an Independent Contractor/Employees:**

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor

agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

**B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of $100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of $100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds $100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

**C. Use Of Material, Equipment, Or Personnel:**

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

**D. Property:**

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.

c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.

f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:

a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

**E. Records and Audits:**

**1. *General*:**

a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry

(e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), 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.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law 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 Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

**2. *Cost Allocation*:**

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. ***Federal Funds*:** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

**F. Confidentiality:** The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**G. Publicity:**

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first

submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

**H. Web-Based Applications-Accessibility:** Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

**I. Non-Discrimination Requirements:** Pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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. 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 the Master 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 the Master 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 the Master Contract. The Contractor shall be subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

**J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting State 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 State Agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting State 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 Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

2. The Contractor 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;

3. The Contractor shall 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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.

**K. 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.

1. If the total dollar amount of the Master Contract is greater than $1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:

a) The Contractor has made reasonable efforts to encourage the participation of 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 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 the Master Contract and agrees to cooperate with the State in these efforts.

**L. Workers' Compensation Benefits:**

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

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

**M. Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;

2. any debts owed for UI contributions, interest, and/or penalties;

3. the history and results of any audit or investigation; and

4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

**N. Vendor Responsibility:**

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:

a) to require updates or clarifications to the Questionnaire upon written request;

b) to inquire about information included in or required information omitted from the Questionnaire;

c) to require the Contractor to provide such information to the State within a reasonable timeframe; and

d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and

e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees

to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non- responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

**O. Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

**P. Consultant Disclosure Law:**[9] 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.

**Q. 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 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, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the

[9] Not applicable to not-for-profit entities.

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 condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**PART II – 2.**
**Attachment A-1**
**PROGRAM SPECIFIC TERMS and CONDITIONS**

The provisions of Sections I through IV of this Attachment A-1 apply to all New York State Office for the Aging (NYSOFA) grant contracts unless expressly superseded by the provisions of Attachment A-2 (Federally Funded Grants). Program specific clauses, if any, are contained in Section V of this Attachment A-1.

## I. General Provisions

A. **Laws, Rules, Regulations:** The Contractor shall comply with any provisions of the Older Americans Act of 1965, as amended, determined applicable by the State, and all rules and regulations pertaining thereto promulgated by the Administration on Aging, United States Department of Health and Human Services, which are in effect or become effective during the term of this Agreement. The Contractor shall comply with all applicable New York State Laws, including the State Finance Law and Article II, Title I of the Elder Law, and with all applicable rules and regulations of the State and the Office of the State Comptroller which are in effect or become effective during the term of this Agreement.

B. **Age Discrimination:** The Contractor shall comply with the Age Discrimination in Employment Act of 1967 (Pub. L. 90-202) (ADEA), as amended (29 U.S.C. § 621 *et seq.*), the Equal Pay Act of 1963 (Pub. L. 88-38) (EPA), as amended (29 U.S.C. § 206(d)) and the NYS Human Rights Law, Article 15 of the New York State Executive Law.

C. **Federal Non-Discrimination Statutes:** The Contractor shall comply with Titles VI and VII of the Civil Rights Act of 1964 (Public Law 38-352), and any amendment thereto, and all rules and regulations pertaining thereto promulgated by the United States Department of Health and Human Services which are in effect or become effective during the term of this Agreement. In addition to the above protections, the Contractor shall comply with Titles I, II and III of the Americans with Disabilities Act of 1990, and any amendment thereto, which protects qualified individuals with disabilities from discrimination in employment and provides access to public services. If reasonable accommodations are required for any older New Yorker (i.e., New Yorkers aged sixty {60} or older) with a disability desiring to participate in services funded under this Agreement, no fees can be charged to the participant for such accommodation.

D. **State Monitoring:** The Contractor shall comply with the program management and assessment requirements of the State, including but not limited to announced and unannounced on-site visits by State staff, disclosure of all program files and related fiscal records and development of a corrective action plan if required by the State in a program assessment report.

E. **Program Changes:** The Program Work Plan (Attachment C) shall not be modified without approval from the State. If modification to the Program Work Plan is necessary, the Contractor must submit a written request to the State and await State approval before implementing such changes.

**F. Notice:**

1. Notices to the State shall be addressed to the New York State Office for the Aging at the address identified on the face page of this Master Contract and shall include the Project Name and Contract Number.

2. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment C, the Work Plan.

G. **Subcontracts:** The Contractor may enter into subcontracts for the provision of the services described in the Program Work Plan. All such subcontracts shall be written according to State and local standards and a copy of each executed subcontract shall be forwarded to the State prior to payment by the State for expenditures incurred under such subcontract. All applicable grant provisions contained in this contract and agreed to by the contractor must be extended to each subcontractor and included in the contract with the subcontractor. It shall be the responsibility of the Contractor to monitor and assess the activities performed under such subcontracts, and to ensure that these activities are provided in accordance with all applicable requirements contained in this Agreement.

H. **Funding Source Recognition:** The Contractor agrees that any public information materials or other printed or published materials will give due recognition to the fact that the program is supported with State Funds and such recognition will be in a form prescribed by the State. Where the Contractor acknowledges the funding source for and/or assistance in acquiring equipment, the acknowledgment must give due recognition to the fact that the

acquisition was made possible by a grant of State funds and such recognition will be in a form prescribed by the State.

I. **Aging Network Cooperation:** The Contractor shall work cooperatively with and consult with the Area Agencies on Aging in the region to be served by this Agreement.

J. **Community Cooperation:** The Contractor shall work cooperatively with public and private agencies, institutions, organizations, and associations within New York State and, where appropriate, with national organizations in the development of activities under this Agreement.

K**. Contract Personnel:** The Contractor shall assume responsibility for recruitment, retention, and/or dismissal of all personnel to be employed in the conduct of this Agreement. The Contractor shall ensure that the personnel hired are qualified to carry out the activities outlined in this Agreement.

L. **Supplement of Existing Funding:** The Contractor agrees that these funds shall be used to supplement, and not supplant, any existing public or private funding.

M. **Indemnification Claims or Lawsuits:** The Contractor, solely at its expense, shall defend any claim or suit which may be brought against the State for the infringement of United States patents, copyrights, or trademarks arising from the Contractor's or the State's use of any equipment, materials or information prepared, developed, or furnished by the Contractor in connection with the performance of this contract, and in any such suit shall satisfy any final judgment for such infringement. The State will give the Contractor written notice of such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation. If principles of governmental or public law are involved, the State may participate in the defense of any action identified but no costs or expenses shall be incurred upon the account of the Contractor without the Contractor's written consent. If, in the Contractor's opinion, the equipment, materials, or information mentioned above is likely to or does become the subject of a claim of infringement of a United States patent, trademark, or copyright, then, without diminishing the Contractor's obligation to satisfy any final award, the Contractor may substitute other suitable equipment, materials and information, or at the Contractor's option and expense, obtain the right for the Contractor and the State to continue the use of such equipment, materials and information. If the Contractor wishes to use copyrighted, patented, or trademarked material it shall be responsible to obtain such rights to reproduction and use of the materials so that the State can use it in any way it deems necessary, including all rights to copy and reproduce such materials it sees fit. This will not be at any additional expense to the State beyond the amount of the contract.

## II. Term, Termination and Suspension

A. **Final Accounting:** The Contractor shall make a full and final accounting of all funds received under this Agreement within sixty (60) days of receipt or issuance of a notice of termination.

## III. Payment and Reporting

[No additional provisions]

## IV. Additional Contractor Obligations, Representations and Warranties

A. **Minority and Women-Owned Business Enterprises (MWBE):** NYSOFA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") 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. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSOFA, to fully comply and cooperate with the NYSOFA in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). 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") or other applicable federal, state or local laws. 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 withholding of funds or such other actions, liquidated damages pursuant to Section IV.F of this Attachment or enforcement proceedings as allowed by the Contract.

1. For purposes of this procurement, NYSOFA hereby establishes an overall goal of 30% for MWBE participation with a recommended breakdown of 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation. Contractors are encouraged to fulfill the

suggested 15% goal for both MBE and WBE vendors; however, strict adherence to the suggested MBE and WBE percentages is not mandatory as long as the overall 30% goal is met.

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section IV.A.1 hereof, Contractor should reference the directory of New York State Certified MBWEs found at http://www.esd.ny.gov/mwbe.html. Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

3. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to NYSOFA for liquidated or other appropriate damages, as set forth herein.

**B. Equal Employment Opportunity (EEO):**

1. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

2. Contractor shall comply with the following provisions of Article 15-A:

   a. Contractor and Subcontractors 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.
   b. The Contractor shall submit an EEO policy statement to NYSOFA within seventy two (72) hours after the date of the notice by NYSOFA to award the Contract to the Contractor.
   c. If Contractor or Subcontractor does not have an existing EEO policy statement, NYSOFA may provide the Contractor or Subcontractor a model statement (see Form MWBE 100 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
   d. The Contractor's EEO policy statement shall include the following language:

      i. 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.
      ii. 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.
      iii. 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.
      iv. 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.

   e. Form MWBE 101 - Staffing Plan - 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. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

   f. Form MWBE 102 - Workforce Employment Utilization Report ("Workforce Report"):

i. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to NYSOFA of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

ii. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

iii. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

g. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

**C. MWBE Utilization Plan**

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (form MWBE 103) either prior to, or at the time of, the execution of the contract.

2. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section IV.A.1 of this Attachment.

3. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NYSOFA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**D. Waivers**

1. For Waiver Requests Contractor should use Form MWBE 104 – Waiver Request.

2. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, NYSOFA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

3. If NYSOFA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, NYSOFA 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.

**E. Quarterly MWBE Contractor Compliance Report:** Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form MWBE 105) to NYSOFA by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

**F. Liquidated Damages - MWBE Participation**

1. Where NYSOFA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to NYSOFA liquidated damages.

2. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

3. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSOFA, Contractor shall pay such liquidated damages to NYSOFA within sixty (60) days after they are assessed by NYSOFA unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of NYSOFA.

G. **Property**

1. The Contractor agrees that all rights and title to any materials (manuals, tests, guides, audio or visual materials or devices) developed with funds under this Agreement shall become the property of the State. Reproduction, distribution, sale, release or other use of such material by the Contractor must be specifically requested in writing by the Contractor and must receive prior approval by the State.

2. Equipment (those items having an acquisition cost of $1,000 or more per unit and a useful life of at least one year) purchased under this Agreement shall be the property of the Contractor and shall be used by the Contractor in the program for which it was acquired as long as needed, whether or not the Contractor continues to receive State funds. The State reserves the right to require the transfer of the equipment purchased under this Agreement if it is no longer needed in the program for which it was acquired.

3. The Contractor understands and agrees that all equipment purchased by the Contractor and its subcontractors under this Agreement will only be used to benefit older New Yorkers. Further, the Contractor agrees that all such equipment will be used for non-sectarian purposes.

H. **Safeguards for Services**

1. The Contractor shall utilize these State funds to provide services to any older New Yorker that may wish to avail themselves of the service, subject to the availability of funding. This does not preclude a contractor from establishing uniformly applied, non-discriminatory service eligibility criteria or prioritizing the provision of services based on a standardized determination of older New Yorkers' needs, subject to the State's approval.

2. The Contractor shall:
   a. assure equal access for participation, services, activities and informational sessions without regard to race, color, religion, disability, sex, national origin, partisan affiliation or sexual orientation even if the contractor's organization operates primarily to serve a particular ethnic, religious or other specific population or special interest group;
   b. prevent the use of official authority, influence or coercion to interfere with or affect elections or nominations for public office;
   c. assure there is no coercion nor advice to other persons to contribute anything of value to a party, committee, organization, agency, or person for political purposes, nor engage in any other partisan activities;
   d. assume that services provided are secular in nature and in no event are state funds to be used for religious/sectarian purposes or activities or to benefit a religious institution.

I. **Program Income:** The Contractor shall use all program income (including voluntary participant contributions, cost sharing and fees collected) for services funded under this Agreement to expand services under this Agreement and incorporate them into the budget accordingly.

J. **Confidentiality**: The Contractor agrees to maintain the confidentiality of all personal information pertaining to older New Yorkers served under this Agreement, including contributions; disclosure of such information may be made only when necessary to the provision of services, unless the older New Yorker or his/her authorized representative gives his/her informed consent to disclose such information, disclosure is required by court order, or such information is provided in summary, statistical, or other form, which does not identify particular individuals. However, nothing herein is intended to require any provider of legal assistance to reveal any information that is protected by the attorney-client privilege.

**V. <u>Program Specific Clauses</u>**

1. The Sponsor agrees to comply with applicable State and Federal contract laws and regulations. The Sponsor further

agrees to comply with all applicable Federal and State statutes, regulations, (including 45 CFR 76, suspension and debarment), policies and procedures that apply to the New York State LTCOP Program and with the provisions of this Contract.

2. Meeting the requirements of the State Ombudsman and NYSOFA fiscal staff to ensure that it takes whatever action is necessary to obtain all Federal, State and local funding available for the Local Ombudsman Program; and agrees to make such funds available to the Ombudsman Program it sponsors.

3. The Local Sponsor agrees to provide adequate administrative support for the local Ombudsman Program, including suitable and confidential space for the program staff, locked file cabinets, supplies, equipment and general support services, and staff support. To the extent practicable the AAA should employ a full-time Ombudsman Coordinator for every 2,000 long-term care beds in its service area.

4. The Sponsor agrees to promote the Local LTCOP Program it sponsors through the Local media and community groups and to develop educational and outreach materials about the Local LTCOP program and to make this information available to caregivers, seniors and the general public, with special targeting efforts made to minorities and low-income persons and rurally isolated persons

5. Assisting the Coordinator in recruiting Ombudsman Program volunteers whenever possible and with targeting efforts made to reach retired professionals to be LTCOP volunteers and providing adequate meeting space for training and in-services.

6. Making such funds available to such Local Ombudsman Program for the activities set out in the Coordinator's Annual Ombudsman Program Work Plan, as approved by the State Ombudsman, and with the funding goals of the State Ombudsman in the Work Plan.

7. Providing information that may affect the Local Ombudsman Program to the local Coordinator.

8. The Local Sponsor agrees to respect and support the confidential nature of the Local Ombudsman Program files and activities and raise substantive questions of confidentiality to the State Ombudsman. The Local Sponsor further agrees that when its employees are also representatives of the Local LTCOP Program, such employees shall comply with NYSOFA's policies and procedures governing Local LTCOP Programs. The Sponsor further agrees that such employees shall not be held to agency personnel policies of the Sponsor that may violate program requirements of the State Ombudsman and LTCOP Policies and Procedures and, the Sponsor must consult with the State Ombudsman when issuing such policies to determine whether there is a conflict that needs to be resolved as to their LTCOP program activities. The Local Sponsor further agrees that the Ombudsman Program files maintained by the Local Ombudsman Program are the property of the New York State Ombudsman. The Sponsor agrees that without written consent of a complainant or resident, personal information relating to complainants or residents who provide information to Ombudsman relating to complaints shall be kept confidential within the LTCOP program and shared on a need-to know basis only within such program; unless such information is required to be released per a court order. Information about LTCOP cases that is summarized or redacted to prevent any breach of confidentiality may be shared as determined appropriate by the Local Coordinator.

9. The Sponsor agrees to develop, in coordination with the Ombudsman Program Coordinator, the Work Plan. Complete, in consultation with the Coordinator, the projected Program Budget ensuring that it supports the approved Coordinator's Annual Ombudsman Program Work Plan and goals of the State Ombudsman. Work throughout the period of this Contract to help implement the Coordinator's Annual Ombudsman Program Work Plan.
10. The Sponsor understands and agrees that it is not legally responsible for directing or monitoring Local Ombudsman Program activities in its subject area. Directing and monitoring of Local Ombudsman Program activities remains the specific responsibility of the State Ombudsman, in consultation with NYSOFA.

11. The Sponsor agrees that prior to hiring a Local Program Coordinator or any paid staff for the Local Program it will forward the resume of any person whom the Sponsor wishes to be designated as a Local Ombudsman Program Coordinator or hire as staff to the State Ombudsman for approval.

12. The Sponsor agrees that it will employ at least two paid staff members, including the Local Ombudsman Program Coordinator, for the Local Program who are certified ombudsmen.

13. The Sponsor agrees to notify the Office of the State Long Term Care Ombudsman at
least two weeks prior to, or as soon as practicable, when a Local Ombudsman Program Coordinator resigns or leaves

employment with the agency or plans to be on an extended leave of absence of more than three weeks. Notification may be made by telephone, mail or email. The Sponsor agrees to provide the Office of the State Long Term Care Ombudsman with a written plan, including a timeline, for replacing the coordinator or for coverage during an extended absence.

14. The Sponsor agrees to ensure that the local Ombudsman Program will maintain an accurate and current list of active certified volunteer ombudsmen and facilities within its service area in an electronic data base as required by the State Ombudsman and to provide the State Ombudsman with a current list of active certified volunteer ombudsmen, including the volunteers' contact information (name, telephone number, address and email address), and/or facilities within its service area upon request.

15. The Sponsor agrees to ensure that the local Ombudsman Program coordinator attends all training events required by the State Ombudsman, including the annual statewide Ombudsman Training Conference (Training Institute).

16. The Sponsor agrees that the local Ombudsman Program will enter all program activity and complaint data in a timely manner in accordance with Program direction and any applicable policy and procedures. Vouchers submitted by the Sponsor will not be reimbursed if the local Ombudsman Program is more than 45 days behind in data entry, as determined by the assigned Assistant State Ombudsman.

17. The Sponsor agrees that it will not apply to the Ombudsman Local Program any fiscal policy restrictions applicable to general agency funds when these conflict with the goals of the Coordinator's annual Work Plan. This includes restrictions on travel for required Ombudsman Program training or restrictions on stipends for volunteers or reimbursement for their out-of-pocket expenses or funding of volunteer retention activities. The Sponsor will provide general fiscal oversight of the Local Ombudsman Program to the extent that it works with the Coordinator to complete required fiscal forms for transmittal to NYSOFA and shall check that these forms are supported by vouchers that show that the funds were used for Ombudsman Program purposes in accord with the Program Budget and the approved Coordinator's Annual Program Work Plan.

18. The Sponsor understands that it must carry liability insurance as set out in the Standard Assurances to this Agreement. The particulars of such liability insurance policy are as follows:

(1) The Local Sponsor will carry liability insurance in the sum of at least one million ($1,000,000.00) dollars per occurrence to protect the New York State Office for the Aging (NYSOFA) and the State of New York against any and all claims, loss or damage, whether in contract or tort, including claims for injuries to, or death of persons or damages to property, whether such injury, death or damages be attributable to the negligence or any other acts of , its employees, volunteers, agents or otherwise; and,

(2) ensure that such policy or policies of insurance shall be obtained from a company or companies duly licensed to do business in the State of New York and shall name NYSOFA and the State of New York as parties insured thereunder; and,

(3) ensure that the Sponsor shall deliver to NYSOFA two executed originals of each liability policy and certificate evidencing all such coverage.

19. The Sponsor agrees to carry on effective communication and dialogue with the AAAs and community leaders in the Sponsor's service area, regarding the Local Ombudsman Program it sponsors, with the goal of better addressing the needs of these vulnerable residents of long term care facilities and will work with the Local Coordinator and State Ombudsman to try to develop appropriate solutions to commentary and suggestions from AAAs and community leaders about the program.

20. The Local Sponsor agrees that State Ombudsman representatives will monitor the Local Ombudsman Program periodically during the period of this Contract, according to a schedule set by the State Ombudsman. This is for the purpose of providing on-going program guidance and oversight. These State representatives shall also respond to emergency and crisis complaints requiring their expertise when called upon by the Local Coordinator or the Sponsor.

21. The Local Sponsor agrees that the Office of the State Ombudsman will conduct a formal assessment of the Local Ombudsman Program in the Sponsor's service area, and will provide the summarized results to the chief officer of the Sponsor and to the AAA Directors in the Sponsor's subject service area. Such assessment will be conducted on an annual basis, or as deemed appropriate by the State Ombudsman, with notice to the local Sponsor. The State Ombudsman agrees to notify the Sponsor's chief officer at least 30 days prior to any formal Ombudsman Program assessment in order to provide an opportunity for the Sponsor to meet with the State Ombudsman Program representative to provide input or recommendation it may have about LTCOP activity at the close of the assessment process.

22. The Local Sponsor agrees that no Title VII funds will be budgeted or expended for the Sponsor's administration costs. The Sponsor will raise questions about appropriate use of funds to the State Ombudsman.

23. The Sponsor agrees to coordinate with the Local Coordinator in order to comply with applicable reporting requirements set out by NYSOFA under this Contract.

24. Cost overruns of up to 10% or $1,000 whichever is greater, for an individual budget category will require a budget modification. If the cost overrun is in excess of 10% of the five year amount of the contact or is to include funding for a budget category previously not funded, a contract modification will be required. If funding is needed for unauthorized or unbudgeted items, the Sponsor, with documentation provided by the Local Coordinator, shall make a written request to NYSOFA and receive written approval from it before incurring such expenses.

25. The Sponsor agrees to submit required NYSOFA claims for reimbursement of Local LTCOP activities under this Agreement on a quarterly basis.

26. The Sponsor agrees that NYSOFA can only reimburse vouchered claims for payment under this Contract that are for approvable LTCOP expenses incurred through March 31 of each year of this contract for State funding and through December 31 of each year of this contract for Federal funding. Any changes in the projected amounts of State funding available for the annual period of April 1 to March 31, as finally appropriated by the State Legislature, are to be reflected in an addendum to this Contract.

27. The Sponsor agrees to conduct criminal background checks on all employees and volunteers involved with the LTCOP in accordance with the requirements set forth by the State Ombudsman.

## Part II – 3.
## ATTACHMENT A-2
## FEDERAL SPECIFIC CLAUSES

1. The sponsor agrees and understands that the sponsor, including any contractor or representative of the sponsor, shall comply with applicable provisions of the Older Americans Act, the New York Elder Law, and any State Regulations concerning conflicts of interest. Specifically, as provided in the Older Americans Act, the sponsor and its contractors and representatives shall be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves. Further, as provided in the New York State Elder Law, no state ombudsman, authorized representative, local ombudsman or immediate family member of such person shall have a direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care facility; have an ownership or investment interest (represented by equity debt, or other financial relationship) in a long term care facility or a long term care service; be employed by, or participate in the management of, a long term care facility; and receive remuneration (in cash or in-kind) under a compensation arrangement with an owner or operator of a long term care facility. Under this agreement, these restrictions will apply to contractors or sub-contractors of local ombudsman programs.

2. The sponsor agrees and understands that organizational conflicts of interest cannot be remedied. The Sponsor further understands and agrees that if a conflict of interest involving an individual applicant, employee or volunteer of the LTCOP is identified, the Sponsor shall coordinate with the State Ombudsman to remedy the conflict of interest for the affected individual. If a remedy cannot be agreed upon and implemented, the Sponsor agrees and understands that the affected individual cannot serve the LTCOP.

3. The sponsor agrees and understands that ombudsman files and records may only be disclosed at the discretion of the State Ombudsman. Additionally, the sponsor agrees and understands that the identity of a resident or complainant shall be disclosed only upon consent of that resident or complainant or such disclosure is required by Court order.

4. The sponsor agrees and understands that the State of New York will provide indemnity for litigation affecting Ombudsman Program staff and volunteers under certain circumstances. This indemnification applies to those claims that arise from an alleged act or omission which occurred or is alleged in the complaint to have occurred while the Ombudsman was acting within the scope of his/her public employment or duties as an Ombudsman. The sponsor agrees and understands that if such a claim arises the sponsor will notify the State Ombudsman within five (5) days of the sponsor's receipt of such claim.

## ATTACHMENT D
## PAYMENT AND REPORTING SCHEDULE

### I. PAYMENT PROVISIONS

In full consideration of contract services to be performed the State Agency agrees to pay and the contractor agrees to accept a sum not to exceed the amount noted on the face page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

**A. Advance Payment and Recoupment Language (if applicable):**

1. The State agency will make an advance payment to the Contractor, during the initial period, in the amount of _____ percent (___%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).

2. Recoupment of any advance payment(s) shall be recovered by crediting (___%) of subsequent claims and such claims will be reduced until the advance is fully recovered within the contract period.

3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

   Period: _____ Amount: _____ Due Date: _____

   Period: _____ Amount: _____ Due Date: _____

   Period: _____ Amount: _____ Due Date: _____

   Period: _____ Amount: _____ Due Date: _____

**B. Interim and/or Final Claims for Reimbursement**

Claiming Schedule (*select applicable frequency*):

- ☐ Quarterly Reimbursement
  Due date _____

- ☐ Monthly Reimbursement
  Due date _____

- ☐ Biannual Reimbursement
  Due date _____

- ☐ Fee for Service Reimbursement
  Due date _____

☐ Rate Based Reimbursement
Due date _____

☐ Fifth Quarter Reimbursement
Due date _____

☐ Milestone/Performance Reimbursement
Due date/Frequency _____

☐ Scheduled Reimbursement
Due date/Frequency _____

## II. REPORTING PROVISIONS

### A. Expenditure-Based Reports (*select the applicable report type*):

☐ Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than _____ days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract.

☐ Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than ____ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

☐ Expenditure Report

The Contractor will submit, on a quarterly basis, not later than ____ days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

☐ Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than _____ days after the end of the contract period.

☐ Consolidated Fiscal Report (CFR)[1]

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

[1] The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

**B. Progress-Based Reports**

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (see Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until ____ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is _____. The agency shall complete its audit and notify vendor of the results no later than _____. The Contractor shall submit the report not later than ____days from the end of the contract.

**C. Other Reports**

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

**TABLE I – REPORTING SCHEDULE**

| PROGRESS REPORT # | PERIOD COVERED | DUE DATE |
|---|---|---|
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Contract Number: #_____
Page 4 of 4, Attachment D – Payment and Reporting Schedule

## PART III: Application
### 1. COVER PAGE

Applicant's (Incorporated) Name: _____

Applicant's Total Budget: _____

Address: _____

City/State: _____ Zip Code: _____

Payee Identification No.: _____ Charities Registration No. (if applicable) _____

President or CEO: _____ Phone: _____

Project Liaison: _____ Phone: _____

Title: _____

E-mail address: _____ Fax number: _____

Fiscal Contact: _____ Phone: _____

Title: _____

E-mail address: _____ Fax number: _____

Program Contact: _____ Phone: _____

Title: _____

E-mail address: _____ Fax number: _____

The bid must be fully and properly executed by an authorized person with **o**riginal signature of person authorized to enter into agreement with the New York State Office for the Aging. The applicant agrees to comply with all State and Federal laws that govern this contract as well as the contract terms that are included as part of this RFA. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this RFA, Appendix A (Standard Clauses For New York State Contracts), Attachment A-1 (Agency Specific Assurances), Attachment A-2 (Program Specific Assurances) and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, applicant affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at: Procurement Lobbying: http://www.ogs.ny.gov/ACPL/

Name: _____ Title: _____
(Print or Type)

Signature: _____ Date: _____ Phone: _____

**PART III**
**2. BUDGET SUMMARY**
**ATTACTMENT B**
**Regional Long Term Care Ombudsman Program**

Name of Applicant:_____

Budget Period: _____

| BUDGET CATEGORY | SERVICE ACTIVITIES | | |
|---|---|---|---|
| | Title VII | State LTCOP | Total |
| 1. Personnel | | | |
| 2. Fringe Benefits | | | |
| 3. Equipment | | | |
| 4.Travel | | | |
| 5. Maintenance & Operations | | | |
| 6. Other Expenses | | | |
| 7. Total Budget (Lines 1-6) | | | |
| 8. Federal/State Funds Requested | | | |
| 9. Local Funds | 0 | 0 | 0 |

**Regional Long Term Care Ombudsman Program**

**Supporting Budget Schedule**

1. Personnel

| Name (if known) & Title | Annual Salary | Amount Chargeable to Program |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | Total: | 0 |

2. Fringe Benefits

| | | | |
|---|---|---|---|
| Social Security: | _____% | Worker's Compensation: | _____% |
| Retirement: | _____% | Unemployment Insurance: | _____% |
| Health Insurance: | _____% | Other (specify): | |
| Life Insurance: | _____% | _____ | _____% |
| Disability: | _____% | _____ | _____% |

Composite Percentage:_____%

Total: $

**PART III**
**3 - PROGRAM WORKPLAN**
**ATTACHMENT C**

**Long Term Care**
**Ombudsman Program**

2015-2016

***Goals and***
***Work Plan***

# Directions

**Goals:** The New York State Long Term Care Ombudsman Program has established five goals for the October 1, 2015 – September 30, 2016 program period. Each goal is followed by objectives which serve as strategic guidance and must be incorporated into each work plan.

**Work plan:** Outline your plan to address the stated objectives to work towards ultimately meeting the stated goal. Please consider your local service area, in terms of community, volunteer, and facility characteristics in order to formulate a plan which will best serve your program area. Your plan should include **specific methods, strategies, and timeframes of implementation.**

## I. Goals and Work Plan

**GOAL #1:**

**Ensure all residents have regular in-person access to Ombudsman Program advocacy services by providing at least one assigned ombudsman for every long-term care facility.**

**Objectives:**

- Identify and implement recruitment strategies specific to the region's needs and resources.
- Sponsor or co-sponsor with a neighboring region at least one certification training per year -OR- make reasonable efforts to ensure that people interested in becoming certified ombudsman are provided training opportunities.

**WORK PLAN:**

**GOAL #2:**

**Strengthen the Ombudsman Program and services by increasing retention of certified volunteers.**

**Objectives:**

- Provide ongoing support and resources to Ombudsmen to ensure that they have the tools and assistance needed to be competent in their role and their ability to complete monthly activity reports and complaint documentation in an accurate and timely manner.
- Offer creative alternatives for volunteers who cannot meet traditional Ombudsman requirements to encourage them to remain involved with LTCOP (ie: office support, data entry, change of facility/setting, pairing up with another volunteer).
- Provide creative volunteer recognition/incentives throughout the year to keep volunteers connected, motivated, and feeling appreciated.
- Implement methods to discover reasons for volunteer separation.

**WORK PLAN:**

**GOAL # 3:**

**Ensure competency and peer/supervisory support through the provision of ongoing training opportunities and scheduled group discussions.**

**Objectives:**

- Provide a minimum of six (6) formal in-services presented by a qualified individual with expertise/resources on a specific subject matter. One of the six (6) in-service trainings must cover complaint handling and documentation.
- Ensure attendance of volunteers at no fewer than four (4) of the formal in-service trainings per year, one of which must include complaint handling and documentation.
- Provide scheduled group events or meetings where peer or supervisory support and discussion can occur (this may include holiday parties, luncheons, or monthly meetings).
- Explore and promote opportunities for co-regional training to bring Ombudsmen together.

***Please provide your proposed topics and timeline for formal in-services***
**WORK PLAN:**

**GOAL # 4:**

**Ensure optimal use of the data reporting system (currently Ombudsmanager) to identify trends occurring in long-term care facilities, enhance volunteer management and ensure program accountability by entering program data in a timely and accurate manner.**

**Objectives:**

- To establish a system for collecting volunteer complaints/activity forms once every thirty (30) days.
- To enter data into the data reporting system (currently Ombudsmanager) at a minimum of once every thirty (30) days.
- To maintain communication with State LTCOP to report any difficulties in meeting stated objectives or identify technical assistance needs.
- To establish a review process to ensure the accuracy, thoroughness and integrity of complaint and program activity data collected and entered with particular attention to:
    - Timely case completion
    - Proper application of complaint codes
    - Appropriate disposition of cases
    - Use of complaint waivers of confidentiality
    - Thorough and accurate documentation of complaint investigations
    - Proper input of program activities
    - Timely follow up with volunteers to request documentation amendments or provide assistance as appropriate.

  You may use the Complaint Review Sheet found on the LTCOP website to conduct this process for complaints.

**WORK PLAN:**

**GOAL #5:**

**Ensure the promotion of quality care and resident empowerment through effective systems advocacy at the facility, community and state level, including raising awareness of issues impacting long-term care residents, facilitating public comment on relevant laws, regulations and policies and representing the interests of residents before government agencies, elected officials and policy makers.**

**The Older Americans Act clearly mandates that the ombudsman program engage in systems-level advocacy on behalf of long-term care residents.**

Develop at least one objective that addresses the stated goal to promote quality care and resident empowerment through systems advocacy activities. These efforts may include but are not limited to the following:

Using federal funds, work for legislative changes to improve the health, safety, welfare and rights of residents.

Working for regulatory or administrative changes to improve the health, safety, welfare and rights of Residents

Contacting state or local legislators, policy makers or the media about issues impacting long-term care residents or to educate them about the ombudsman.

Educating legislators, policy makers, governmental agencies, the media, residents , their families and the public about: a) the impact of laws, regulations, policies and/or practices on long-term care residents (e.g., through written materials, presentations, etc.), and b) the status of facilities in which there are serious deficiencies affecting resident well-being.

Making recommendations or providing comments to regulatory agencies regarding current or proposed regulations impacting long-term care residents.

Facilitating public comment about facility policies at the individual facility level or about public policies at the regional and state level.

Disseminating ombudsman program public reports and positions.

Initiating or participating in coalitions or task forces to address issues affecting long-term care residents in your program jurisdiction.

Convening or participating in public forums or hearings relative to long-term care issues.

**WORK PLAN:**

## PART III
## 4. MANDATORY MINIMUM QUALIFICATIONS
## (See page 3 of the RFA)

Failure to submit a completed Part III-4 will result in rejection of the application.

Applicant:_____

1. The Sponsor and its employees and volunteers shall be free of “conflict of interest” (please see the definition of conflict of interest in Part II-3 of this RFA).

   Yes_____ No_____

2. The Sponsor currently has or will have upon award of the contract, a region wide presence, and physical office space, in the region(s) for which the entity is applying.

   Yes_____ No_____

3. The Sponsor is a public entity or a designated non-profit agency.

   Yes_____ No_____

4. The Sponsor is physically located in New York State.

   Yes_____ No_____

## PART III
## 5. EVALUATION QUESTIONS

1. Please indicate the region or regions for which you are applying.

2. Describe any experience your agency has in advocating for the aging and disabled population. Include a description of the types of issues handled and outreach conducted or services provided to minority or emerging populations. Also describe your agency's relationship or interaction with the Offices for the Aging in the region(s) for which you are applying.

3. Describe your agency's experience recruiting and managing volunteers. Include any experience recruiting volunteers from diverse backgrounds.

4. Describe how your agency plans to implement the mission and each of the functions of the Long Term Care Ombudsman Program listed below:

   A. Provide services to protect the health, safety, welfare and rights of long-term care residents.

   B. Ensure residents in the service area of the region have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance.

   C. Identify, investigate, and resolve complaints made by or on behalf of residents that relate to their health, safety, welfare or rights.

   D. Represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare and rights of residents.

   E. Review, and if necessary, comment on any existing or proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and, facilitate the ability of the public to comment on the laws, regulations, policies and actions.

   F. Support the development of resident and family councils.

5. Describe how your agency's mission and core functions will complement the mission of the Long Term Care Ombudsman Program.

6. Describe any experience your agency has using web based data collection and reporting systems to generate reports and analyze data trends.

7. SLTCOP requires local designees to provide annual certification training and on-going in-servicing. Describe your agency's experience and capacity for training volunteers, including your agency's ability to obtain appropriate space to conduct the training and in-service events.

8. The program handles confidential information and files. Describe the steps your agency will take to protect confidential files and provide an environment where staff can have confidential conversations with residents and others seeking assistance from the program. Describe the office space your agency will be dedicating for use by the LTCOP program staff.

9. Describe your agency's capacity for providing dedicated staff time to the program. How many staff will be employed and how will the staff time be divided or allocated? What experience and/or qualifications do/will these staff possess? Please include resumes for existing staff you plan to dedicate to the program. NOTE: Currently the aspirational standard recommended by the National Institute of Medicine is one full-time ombudsman for every 2,000 long-term care beds.

10. Describe your agency's experience with the NYS accounting/vouchering processes. Does your agency have staff dedicated to fiscal operations?

11. Describe your agency's current operating budget, sustainability plan for supporting ombudsman program operations and your ability to meet standard accounting practices.

**Part IV**

**1. NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes___ or No___

If yes:

(2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes___ or No___

_____
**Signature**

_____
**Date**

## Part IV- 2. ST-220 CA

### NYS Taxation and Finance Form ST-220-CA

Contractor Certification to Covered Agency

This form may be found electronically at:

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

**General information**

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency,* with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on the Tax Department's Web site, by fax, or by mail. (See *Need help?* For more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed. If you have questions, please call Tax Department's Contractor Information Center at 1 800 698-2931. For additional information and frequently asked questions, please refer to Tax's web site: http://www.tax.state.ny.us/pdf/publications/sales/pub223.pdf

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

**When to complete this form**

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

## Part IV- 2. ST-220 TD

**NYS Taxation and Finance Form ST-220-TD**

Contractor Certification

This form may be found electronically at:

http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

**General information**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than $100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA. All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion. For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006),* available at http://www.tax.ny.gov/*.*

Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931. For additional information and frequently asked questions, please refer to Tax's web site: http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT**
**DATA ENTRY SECTION**
**W A HARRIMAN CAMPUS**
**ALBANY NY 12227**

## Part IV - 3.

## Procurement Lobbying Act
## Applicant Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:
_____

Address: _____
_____

Name and Title of Person Submitting this Form: _____
_____

Contract Procurement Number: _____

Date:_____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____
_____
_____
_____
_____
_____
_____
_____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

_____
_____
_____
_____
_____
_____
_____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By:_____ Date:_____
Signature

Name:_____

Title: _____

## Part IV - 4.

## Vendor Responsibility Questionnaire

The Office of the State Comptroller (OSC) maintains the VendRep system, which allows business entities (vendors) to enter and maintain their Vendor Responsibility Questionnaire (VRQ) information in a secure, centralized database. It is recommended that all potential vendors prepare their VRQ on-line as follows: http://www.osc.state.ny.us/vendrep/forms_vendor.htm and do so at the time of application submission. For direct VendRep user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672, or by e-mail at helpdesk@osc.state.ny.us .

If a potential vendor opts to use the paper copy, the form is found at http://www.osc.state.ny.us/vendrep/forms_vendor.htm on the OSC website.

## PART IV- 5.
## Consultant Disclosure Legislation – Consultant Reporting

| **OSC Use Only:** |
|---|
| Reporting Code: |
| Category Code: |
| Date Contract Approved: |

**FORM A**

### State Consultant Services - Contractor's Planned Employment From Contract Start Date Through The End Of The Contract Term

State Agency Name: Agency Code:
Contractor Name: Contract Number:
Contract Start Date: / / Contract End Date: / /

| Employment Category | Number of Employees | Number of hours to be worked | Amount Payable Under the Contract |
|---|---|---|---|
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Name of person who prepared this report:

Title: Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary) Page of

## PART IV- 5.
## Consultant Disclosure Legislation – Consultant Reporting

**FORM B**

| **OSC Use Only:** |
|---|
| Reporting Code: |
| Category Code: |

**State Consultant Services**
**Contractor's Annual Employment Report**
**Report Period: April 1, to March 31,**

Contracting State Agency Name: Agency Code:
Contract Number:
Contract Term: / / to / /
Contractor Name:
Contractor Address:
Description of Services Being Provided:

**Scope of Contract (Choose one that best fits):**
Analysis ☐ Evaluation ☐ Research ☐ Training ☐
Data Processing ☐ Computer Programming ☐ Other IT consulting ☐
Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐
Health Services ☐ Mental Health Services ☐
Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☐

| Employment Category | Number of Employees | Number of Hours Worked | Amount Payable Under the Contract |
|---|---|---|---|
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Name of person who prepared this report:
Preparer's Signature:_____
Title: Phone #:
Date Prepared: / /

Use additional pages if necessary) Page of

## Part IV – 6.
## Non-Collusive Bidding Certification

**(Required by: Section 139-D of the NY State Finance Law)**
SECTION 139-D, Statement of Non-Collusion in bids to the State:

**BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

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

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

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**
[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

*Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 2015 as the act and deed of said corporation of partnership.*

Name of Authorized Representative: _____

Signature: _____

Date: _____

Organization Name: _____

Federal ID: _____

# PART V: ATTACHMENTS
## Part V-1
## PREQUALIFICATION REQUIREMENT

Pursuant to the New York State Division of Budget Bulletin H-1032, dated June 7, 2013, New York State has instituted key reform initiatives to the grant contract process which require not-for-profits to register in the Grants Gateway and complete the Vendor Prequalification process in order for proposals to be evaluated. Information on these initiatives can be found on the Grants Reform Website.

**Proposals received from not-for-profit applicants that have not Registered and are not Prequalified in the Grants Gateway on the proposal due date of 00:00 PM on 00/00/00 cannot be evaluated. Such proposals will be disqualified from further consideration**.

Below is a summary of the steps that must be completed to meet registration and prequalification requirements. The Vendor Prequalification Manual on the Grants Reform Website details the requirements and an online tutorial are available to walk users through the process.

1) **Register for the Grants Gateway**.

- On the Grants Reform Website, download a copy of the Registration Form for Administrator. A signed, notarized original form must be sent to the Division of Budget at the address provided in the instructions. You will be provided with a Username and Password allowing you to access the Grants Gateway.

  If you have previously registered and do not know your Username please email grantsreform@budget.ny.gov . If you do not know your Password please click the Forgot Password link from the main log in page and follow the prompts.

2) **Complete your Prequalification Application.**

- Log in to the Grants Gateway. **If this is your first time logging in,** you will be prompted to change your password at the bottom of your Profile page. Enter a new password and click SAVE.

- Click the *Organization(s)* link at the top of the page and complete the required fields including selecting the State agency you have the most grants with. This page should be completed in its entirety before you SAVE. A *Document Vault* link will become available near the top of the page. Click this link to access the main Document Vault page.

- Answer the questions in the *Required Forms* and upload *Required Documents*. This constitutes your Prequalification Application. Optional Documents are not required unless specified in this Request for Proposal.

- Specific questions about the prequalification process should be referred to your agency representative or to the Grants Reform Team at grantsreform@budget.ny.gov.

**3) Submit Your Prequalification Application**

- After completing your Prequalification Application, click the ***Submit Document Vault*** Link located below the Required Documents section to submit your Prequalification Application for State agency review. Once submitted the status of the Document Vault will change to *In Review*.

- If your Prequalification reviewer has questions or requests changes you will receive email notification from the Gateway system.

- Once your Prequalification Application has been approved, you will receive a Gateway notification that you are now prequalified to do business with New York State.

**Vendors are strongly encouraged to begin the process as soon as possible in order to participate in this opportunity**

# PART V-2
# ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

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

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

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

Public procurements can drive and improve the State's economic engine through promotion of the use the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.
Bidders/proposers can demonstrate their commitment to the use of New York state businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? _____ Yes ____ No

If yes, identify New York State businesses that will be used and attach identifying information.

# PART V-3
# APPLICATION CHECKLIST

1. ____ Cover Page

2. ____ Budget Summary and Supporting Budget Schedule (Attachment B)

3. ____ Mandatory Minimum Qualifications

4. ____ Evaluation Questions

## PART V-4

### MWBE UTILIZATION PLAN - FOR CONTRACTORS OF THE NEW YORK STATE OFFICE FOR THE AGING

**INSTRUCTIONS:** **This form must be** submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (MWBE) under the contract. Attach additional sheets if necessary. Utilization of certified minority- and women-owned business enterprises for non-commercially useful functions may not be counted towards utilization of certified minority-and women-owned business enterprises as identified in this utilization plan.

**Offeror's Name:**
**Address:**
**City, State, Zip Code:**
Telephone No.:
Region/Location of Work:

**Federal Identification No.:**
**Solicitation No.:**
**Project No.:**
**MWBE Goals in the Contract:** MBE % WBE %

| 1. Certified MWBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No. | 2. Classification | 3. Federal ID No. | 4. Detailed Description of Work (Attach additional sheets, if necessary) | 5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract. |
|---|---|---|---|---|
| A. | NYS ESD CERTIFIED<br>☐ MBE<br>☐ WBE | | | |
| B. | NYS ESD CERTIFIED<br>☐ MBE<br>☐ WBE | | | |

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (MWBE 104).**

**PREPARED BY (Signature):**
**DATE:**

**NAME AND TITLE OF PREPARER (Print or Type):**
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

Please submit to:
NYS Office for the Aging, 2 ES Plaza, Albany, NY 12223-1251

**MWBE 103 (Revised 7/14)**

**TELEPHONE NO.:**
**EMAIL ADDRESS:**

**FOR MWBE USE ONLY**

**REVIEWED BY:**
**DATE:**

**UTILIZATION PLAN APPROVED:** ☐ YES ☐ NO Date:
**Contract No.:** **Project No. (if applicable):**

**Contract Award Date:**
**Estimated Date of Completion:**
**Amount Obligated Under the Contract:**
**Description of Work:**
**NOTICE OF DEFICIENCY ISSUED:** ☐ YES ☐ NO Date:_____

**NOTICE OF ACCEPTANCE ISSUED:** ☐ YES ☐ NO Date:_____

## PART V-5

### MWBE SUBCONTRACTORS AND SUPPLIERS
### LETTER OF INTENT TO PARTICIPATE
### FOR CONTRACTORS OF THE NEW YORK STATE OFFICE FOR THE AGING

Recipient/Contractor:_____ Contract/Project No.:_____

Address:_____

Federal ID#:_____ Project/Contract #_____ Location of Work: _____

Dear Recipient/Contractor:

I, _____ intend to perform work for _____
(Name of Subcontractor/Vendor's Firm) (Name of Consultant/Contractor)

located at _____ in connection with the above project. My Minority/Women Business Enterprise (MWBE) status as a MBE ( ) and/or WBE ( ) is certified as of _____
(Check all as applies) (cert. date)

_____ is prepared to do the following:
(Name of Subcontractor/Vendor's Firm)

| (Describe work to be performed on the above project) | Unit Price | Total Amount |
|---|---|---|
| | | |
| | | |
| | | |

Such work is projected to start on _____.
(Commencement Date)

_____ will sign a formal contract for the above work conditioned upon the
(Name of Subcontractor/Vendor's Firm)

approval of an executed contract with the recipient/contractor.

**MBE: Subcontractor or Supplier** or
**WBE: Subcontractor or Supplier (Please circle one**)

Company Official's Name _____ Title:_____

Company Official's Signature: _____

Address: _____

**Consultant/Contractor (Please circle one)**

Company Official's Name: _____ Title: _____

Company Official's Signature _____ Date: _____

Telephone Number: ( ) _____ Fax Number: ( ) _____

## PART V-6

## WORK FORCE EMPLOYMENT UTILIZATION
## FOR CONTRACTORS OF THE NEW YORK STATE OFFICE FOR THE AGING

| **Contract No.:** | **Reporting Entity:**<br>□ Contractor<br>□ Subcontractor | **Reporting Period:**<br>□ January 1, 20___ - March 31, 20___<br>□ April 1, 20___ - June 30, 20___<br>□ July 1, 20___ - September 30, 20___<br>□ October 1, 20___ - December 31, 20___ |
|---|---|---|
| **Contractor's Name:** | | **Report includes:**<br>□ Work force to be utilized on this contract<br>□ Contractor/Subcontractor's total work force |
| **Contractor's Address:** | | |

Enter the total number of employees in 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 | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male (M) | Female (F) | White (M) | White (F) | Black (M) | Black (F) | Hispanic (M) | Hispanic (F) | Asian (M) | Asian (F) | Native American (M) | Native American (F) | Disabled (M) | Disabled (F) | Veteran (M) | Veteran (F) |
| Officials/Administrators | | | | | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | | | | | |
| Office/Clerical | | | | | | | | | | | | | | | | | |
| Craft Workers | | | | | | | | | | | | | | | | | |
| Laborers | | | | | | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | | | | | | |
| Temporary /Apprentices | | | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | | | |

| **PREPARED BY (Signature):** | **TELEPHONE NO.:**<br>**EMAIL ADDRESS:** | **DATE:** |
|---|---|---|
| **NAME AND TITLE OF PREPARER (Print or Type):** | **Submit completed form to:**<br>**NYS Office for the Aging, 2 ESP, Albany, NY 12223-1251**<br>**MWBE 102 (Revised 9/12)** | |

**General Instructions:** The work force utilization (MWBE **102)** is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the MWBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

9. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
10. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
11. Check off the box that corresponds to the reporting period for this report.
12. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
13. Enter the total work force by EEO job category.
14. Break down the total work force by gender and enter under the heading 'Work force by Gender'
15. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the MWBE Program Management Unit at (518) 474-5513 if you have any questions.
16. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
17. 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 report, 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**

## PART V-7

## STAFFING PLAN
## FOR CONTRACTORS OF THE NEW YORK STATE OFFICE FOR THE AGING

**Submit with Bid or Proposal – Instructions on page 2**

| **Solicitation No.:** | **Reporting Entity:** | **Report includes Contractor's/Subcontractor's:**<br>□ Work force to be utilized on this contract<br>□ Total work force |
|---|---|---|
| **Offeror's Name**: | | □ Offeror<br>□ Subcontractor<br>**Subcontractor's name**_____ |
| **Offeror's Address**: | | |

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 (M) | Total Female (F) | White (M) | White (F) | Black (M) | Black (F) | Hispanic (M) | Hispanic (F) | Asian (M) | Asian (F) | Native American (M) | Native American (F) | Disabled (M) | Disabled (F) | Veteran (M) | Veteran (F) |
| Officials/Administrators | | | | | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | | | | | |
| Office/Clerical | | | | | | | | | | | | | | | | | |
| Craft Workers | | | | | | | | | | | | | | | | | |
| Laborers | | | | | | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | | | | | | |
| Temporary /Apprentices | | | | | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | | | | | |

| **PREPARED BY (Signature):** | **TELEPHONE NO.:**<br>**EMAIL ADDRESS:** | **DATE:** |
|---|---|---|
| **NAME AND TITLE OF PREPARER (Print or Type):** | **Submit completed with bid or proposal to:**<br>**NYS Office for the Aging, 2 ESP, Albany, NY 12223-1251**<br>**MWBE 101 (Rev 9/12)** | |

**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 NYSOFA staff person designated in 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**

## Part V-8

## MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT FOR CONTRACTORS OF THE NEW YORK STATE OFFICE FOR THE AGING

**MWBE AND EEO POLICY STATEMENT**

I, _____, the (awardee/contractor) agree to adopt the following policies with respect to the project being developed or services rendered at

_____

**MWBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MWBE contract participation 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 MWBE contractor associations.
(2) Request a list of State-certified MWBEs from NYSOFA 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 MWBEs.
(4) Where feasible, divide the work into smaller portions to enhance participation by MWBEs and encourage the formation of joint ventures and other partnerships among MWBE contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to MWBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting MWBE contract participation goals.
(6) Ensure that progress payments to MWBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage MWBE 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 each solicitation or advertisement 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.

(c) At the request of NYSOFA 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) This organization will include the provisions of sections (a) through (c) of this policy statement 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

Adopted this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

**Contractor's Minority Business Enterprise Liaison**

_____is designated as the Contractor's Minority Business Enterprise
(Name of Designated Liaison)
Liasion responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (MWBE-EEO) program.

**MWBE Contract Goals**

_____% Minority Business Enterprise Participation

_____% Women's Business Enterprise Participation

**EEO Contract Goals**

_____% Minority Labor Force Participation

_____%Female Labor Force Participation

_____
(Authorized Representative)

Title: _____

Date: _____

## PART V-9

## REQUEST FOR WAIVER FORM
## FOR CONTRACTORS OF THE NEW YORK STATE OFFICE FOR THE AGING

| INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS. | | |
|---|---|---|
| **Offeror/Contractor Name:** | **Federal Identification No.:** | |
| **Address:** | **Solicitation/Contract No.:** | |
| **City, State, Zip Code:** | **MWBE Goals: MBE % WBE %** | |
| **By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote MWBE participation pursuant to the MWBE requirements set forth under the contract.** | | |
| **Contractor is requesting a:**<br>**1. ☐ MBE Waiver – A waiver of the MBE Goal for this procurement is requested. ☐ Total ☐ Partial**<br>**2. ☐ WBE Waiver – A waiver of the WBE Goal for this procurement is requested. ☐ Total ☐ Partial**<br>**3. ☐ Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified MWBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development:_____** | | |
| PREPARED BY (Signature):<br>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT. | **Date:** | |
| **Name and Title of Preparer (Printed or Typed):** | **Telephone Number:** | **Email Address:** |
| **Submit with the bid or proposal or if submitting after award submit to:**<br>New York State Office for the Aging<br>Deputy Director, Division of Finance and Administration<br>2 Empire State Plaza<br>Albany, New York 12223-1251 | ********** **FOR MWBE USE ONLY** **********<br>**REVIEWED BY:** | **DATE:** |
| | **Waiver Granted: ☐ YES MBE: ☐ WBE: ☐**<br>**☐ Total Waiver ☐ Partial Waiver**<br>**☐ ESD Certification Waiver ☐ *Conditional**<br>**☐ Notice of Deficiency Issued _____**<br>***Comments:** | |

**MWBE 104** (Revised 9/12)

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and MWBE-oriented publications in which you solicited certified MWBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified MWBE participation were published in any of the above publications.
4. A list of all certified MWBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified MWBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified MWBEs.
6. Provide copies of responses made by certified MWBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified MWBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the MWBEs undertaken for purposes of complying with the certified MWBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

**Note:**
**Unless a Total Waiver has been granted, the Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by AGENCY, to determine MWBE compliance.**

**MWBE 104 Instructions (9/12)**

**V-10**

**MWBE Goal Requirements Certification of Good Faith Efforts**

Please use this form for procurements made from Office of General Services Centralized Term Contracts (i.e., "P" Contracts). If multiple vendors are available, the procurement office must review approved vendors to determine MWBE vendor availability. Please document below the basis of vendor selection and forward a copy to the MWBE Program Unit.

1. P Contract # _____

2. Dollar Value of Procurement $_____

3. Description of Commodity or Service: _____

_____

_____

_____

_____

4. Is/Are MWBE Vendor(s) an option under this contract?

   _____Yes _____No

5. If yes, please list the available MWBE Vendor(s).

_____

_____

_____

6. Name of Vendor(s) Selected.

_____

_____

7. Criteria for Selection.

_____

_____