



SUNY
DOWNSTATE
Medical Center

DATE: January 28, 2013
TO: Prospective Bidders
SUBJECT: Invitation for Bid #13-01 ("IFB")
Provision of Temporary Nursing and Medical Technician Services

Dear Vendor:

The State University of New York – Downstate Medical Center ("SUNY-DMC") hereby issues the attached **Invitation for Bid #13-01 ("IFB")** to prospective Vendors (each a "Vendor" or "Bidder") that may be interested in providing **temporary nursing and medical technician services** for SUNY-DMC at the facilities of its component University Hospital of Brooklyn ("UHB").

SUNY-DMC intends to award a five-year contract to each timely bidder that SUNY-DMC finds to be responsible and responsive to the IFB. Contractors will be called upon to provide the required services based first, on lowest billing rates for the category of service required and second, upon availability of candidates as needed.

Bids in response to this IFB are due by **Thursday, February 21, 2013 at 10:00 A.M.** at the address below.

If your firm intends to submit a bid in response to this solicitation, you must complete and return a copy of the "Intention to Bid" form, which form is attached to the IFB, to SUNY-DMC. If your firm does not intend to submit a bid, you must complete and return a copy of the attached "No Bid Response Form". Either the "Intention to Bid" form or the "No Bid Response Form" must be returned via email to: Herb.Goldberg@downstate.edu.

Failure to submit a completed "No Bid Response Form" by Vendors that do not submit bids in response hereto may result in the removal of such Vendors from SUNY-DMC's solicitation list for future procurement opportunities.

Thank you for your compliance.

Sincerely,

Herbert Goldberg
Contracts Officer

NO BID RESPONSE FORM

Vendor Name:		
Address:		
City, State and Zip Code:		
Federal ID No.	Phone No.	Fax No.
IFB No. and Title: IFB#13-01 – Provision of Temporary Nursing and Medical Technician Services		

REASONS FOR NOT BIDDING ON THE REFERENCED CONTRACT:

(Check all that apply)

- Only interested as a potential sub Vendor.
- Size of this contract is not within the interest of the Vendor.
- Vendor has insufficient amount of time to prepare a proposal. Please indicate in the comment section below the date that the Vendor received the IFB.
- Contract work not within the specialty of the Vendor.
- Other (Please explain in the comment section below):

Comments – Please use additional sheets if necessary.

Signature

Date

INTENTION TO BID IFB # 13-01

We invite vendors to submit bids in accordance with the requirements, terms, and conditions of the attached Invitation for Bid (IFB) for the **provision of temporary nursing and medical technician services.**

This IFB sets forth the requirements for all services and solicits a detailed response from vendors to include pricing and service descriptions in the specified format.

By completing and returning this Intention to Bid as specified below, your company will be expected to submit a bid, which shall be considered if satisfactorily completed. Please replace text in the boxes below with your information to complete this form.

<i>Enter Vendor's Name and Address Here</i>	
Company's Name:	
Address:	
City, State, ZIP:	
Phone Number(s)	

<i>Enter Vendor Representative's Name Here</i>	<i>Enter Rep Email Address Here</i>
Name	Email
<i>Additional Rep Contact (if applicable)</i>	<i>Additional Rep Email (if applicable)</i>
Name	Email
<i>Additional Rep Contact (if applicable)</i>	<i>Additional Rep Email (if applicable)</i>
Name	Email

If your firm intends to submit a bid in response to this IFB, please complete this form and submit a completed copy of it via email to: **Herb.Goldberg@downstate.edu.**

INVITATION FOR BID

SUNY DOWNSTATE MEDICAL CENTER

IFB #13-01

**PROVISION
OF
TEMPORARY NURSING AND MEDICAL TECHNICIAN SERVICES**

Issued: January 28, 2013

TABLE OF CONTENTS

	Page
I. Introduction and Background	2
II. Administrative Considerations	4
III. IFB Requirements/Detailed Specifications	13
IV. Price Proposals	19
V. Contract Provisions	20
Exhibit A	SUNY Standard Contract Clauses – 3 pages
Exhibit A-1	SUNY Affirmative Action Clauses – 3 pages
Exhibit B	Vendor’s Affirmation of Understanding and Adherence in connection with State Finance Law Sections 139-j and 139-k – 2 pages
Exhibit C	Price Proposal Form (including instructions, pricing pages and non-collusion certification) – total 9 pages
Exhibit D	Business Associates Agreement (HIPAA) – 11 pages
Exhibit E	New York State Required Forms: Vendor Responsibility Questionnaire – 7 pages Vendor Certifications pursuant to Section 5-a of the Tax Law Form ST-220-CA – 2 pages Form ST-220-TD – 4 pages Forms A, B and C in connection with State Finance Law Sections 139-j and 139-k – total 4 pages
Exhibit F	Reference Form – 1 page
Exhibit G	Deficit Reduction Act Appendix – 4 pages

SECTION I

INTRODUCTION AND BACKGROUND

A. SUNY-Downstate Medical Center's Need – Purpose of this Invitation for Bid

This Invitation for Bid (“IFB”) is being issued to solicit bids from qualified firms to provide temporary nursing and medical technician services, on an as-needed basis, for SUNY Downstate Medical Center’s (“SUNY-DMC”) component University Hospital of Brooklyn (“UHB”), at both its Flatbush and Long Island College Hospital facilities.

SUNY-DMC intends to award a five-year contract to each timely bidder that it finds to be responsible and responsive to the IFB. During the five-year term of the awarded contracts, SUNY-DMC will call upon contractors, as needed, to provide nurses and/or medical technicians for any of several categories as set forth herein. Whenever a need for nursing arises, SUNY-DMC will give priority to the contractor with the lowest billing rates for the category of nurse or medical technician required and will call upon that contractor first. Should the lowest-priced contractor be unable to meet SUNY-DMC’s requirements, SUNY-DMC will turn to the next lowest-priced contractor in that category then, if necessary, to the third-lowest and so on. Ranking for each category will be based solely on the pricing as bid, or as may be subsequently revised during the term of the contract as described in this IFB.

This IFB outlines the terms and conditions, and all applicable information for submitting a bid. Bidders should pay strict attention to the bid submission date and time, and all other requirements set forth herein, to prevent disqualification resulting from its failure to comply herewith.

B. SUNY-DMC Background

With its main campus located on an urban campus in Brooklyn, New York, SUNY-DMC, also known as “SUNY Health Science Center at Brooklyn”, is one of four academic medical center campuses of the 64-unit State University of New York system. SUNY-DMC traces its roots back to 1860, when a school of medicine was founded at the Long Island College Hospital. SUNY-DMC is comprised of four colleges: the College of Medicine, the College of Nursing, the College of Health Related Professions and the School of Graduate Studies.

SUNY-DMC’s goal is to educate the next generation of physicians, nurses, other health care professionals and researchers, and train them to deliver health care in a densely populated, multi-cultural, multi-ethnic urban community of diverse economic levels. In keeping with its unique history of being the first medical school in the United States to bring teaching to the bedside of hospitalized patients, SUNY-DMC attends to the health care needs of the five million residents of Brooklyn, Queens, and Staten Island through the University Hospital of Brooklyn and a network of educational affiliates.

Our facilities provide exceptional opportunities for those individuals who are committed to promoting health in urban communities, and addressing the complex challenges of investigating

and preventing diseases that confront clinicians, educators, and researchers in such an environment. This special aspect of SUNY-DMC's unique mission is reflected in the students it attracts and selects, the vast majority of whom are drawn from Brooklyn and the New York City region. Many of these students are members of minority groups and/or come from families of first-generation immigrants or economically disadvantaged backgrounds.

Beyond formal degree-granting programs, SUNY-DMC engages in world-class research and supports advanced medical education in both its graduate and continuing education offerings. Downstate's grants rank it the fourth largest grants-funded research program in the SUNY system, and among the National Science Foundation's top third of colleges and universities receiving federal research funds. SUNY-DMC and its regional affiliates also prepare over 875 residents and fellows in fifty-two specialty and sub-specialty programs of three to eight years in length, and offer a full continuing education program to health professionals in the region.

In addition to contributing to the local economy through its role in education, research, and business development, Downstate is one of the top six employers in Brooklyn and created an Advanced Biotechnology Incubator and Biotechnology Park to spur the development of a community of technology companies and medical services in Brooklyn.

The Campus. SUNY-DMC has an enrollment of approximately 1,600 students, employs approximately 4,800 faculty and staff members, provides dormitory space for approximately 400 students and operates a nurse's residence of 107 apartments.

The Hospital. SUNY-DMC's component, University Hospital of Brooklyn ("UHB"), is a 376-bed teaching hospital serving as the regional referral center for the New York City boroughs of Brooklyn, Queens, and Staten Island. UHB currently operates several satellite clinics, all located within five miles of SUNY-DMC's Clarkson Avenue campus. In May, 2011, SUNY-DMC acquired Long Island College Hospital ("LICH"), a 506-bed facility in the Cobble Hill-Brooklyn Heights section of Brooklyn. That facility is now known as University Hospital of Brooklyn at LICH. Between the two major facilities and satellite clinics, UHB now treats approximately 18,000 inpatients, as well as provides 9,600 ambulatory-surgery visits and 325,000 outpatient visits on an annual basis.

Community Outreach. The neighborhoods that comprise the immediate UHB service area include high numbers of under-represented minorities and high concentrations of poverty with residents who bear a high health burden. SUNY-DMC has over sixty educational outreach, community outreach, and HIV prevention and care activities that address the special needs of the community.

SECTION II

ADMINISTRATIVE CONSIDERATIONS

- A. **Bid Submission:** Vendors responding to this IFB (each a “Vendor,” “Offeror” or “Bidder,” collectively, “Vendors,” “Offerors” or “Bidders”) must submit *three (3) originals and four (4) copies* (7 total copies) of their bids (“Bids” or “Proposals”). Each of the three (3) originals must bear an original signature of an officer authorized to bind such Vendor to the terms thereof. Each signature *must be notarized where notarization is called for*. Bid packages must include all required information, presented in the format prescribed herein, and must be submitted as follows:

Bid packages should be either sent by overnight mail to:

SUNY-Downstate Medical Center
Contracts Department
450 Clarkson Avenue - Box 63
Brooklyn, New York 11203-2098
Attention: Herb Goldberg, Contracts Officer

or hand delivered to:

Herb Goldberg, Contracts Officer
Contracts & Procurement Management Department
151 East 34th Street - Room 105
Brooklyn, New York 11203

It shall be the responsibility of each Vendor to ensure that its bid is properly received by the date and time, and at the place, specified. Bid packages may be hand-delivered to the Contracts Department (located at 151 East 34th Street, Room AF-105, Brooklyn, New York) to ensure timely delivery. Vendors planning to hand-deliver their bids must contact the appropriate Contracts representative set forth above (whose contact information is listed below) at least 48 hours in advance to schedule delivery. Late and/or incomplete bids will not be considered. **Under no circumstances will a bid submitted by telephone, e-mail or facsimile be accepted.**

Bid packages should be prepared simply and economically and, where applicable, should reference corresponding numerical/letter sections of the IFB. All information requested must be furnished by the Vendor and must be submitted in written form with its bid. Statements must be complete and accurate and in the format requested. Where applicable, documents must be sworn and notarized. Omissions, inaccuracies and misstatements will be sufficient cause for the rejection of a bid.

- B. **Response Date:** Bids must be received by no later than **10:00 A.M. E.S.T. on Thursday, February 21, 2013** (the “Bid Submission Deadline”). Vendors mailing their bid packages must allow sufficient time for mail delivery to ensure receipt by the time specified. Bid packages must be sealed in an envelope showing the following information on the outside:

- Vendor's name and address
- Bid due date and this Invitation for Bid number (#13-01).

To aid in the bid review process, Vendors should submit bid packages with the following materials in the following sequence:

- **Cover Letter/Letter of Transmittal** in the following format

Table 1 Cover Letter Format

Cover Letter Format
<p>The Offeror's Cover Letter shall contain the following information regarding the Offeror's official representative for its proposal:</p> <ul style="list-style-type: none"> • Name of Offeror's official representative; • Title; • Name of company; • Address; • Telephone number; • FAX number; and • E-mail address of the Offeror's representative.
<p>The Offeror's Cover Letter shall contain a statement certifying that the proposal shall remain valid for at least 150 days.</p>
<p>The cover letter shall include a statement that, if awarded the contract, the Contractor will comply with all the requirements set forth in this IFB, including all the contract terms and conditions in the Contract Provisions section herein and the attached Standard Clauses for all New York State Contracts and State Finance Law §§139j and 139k.</p>

- **References:** Using the Reference Forms attached hereto as *Exhibit "F,"* submit such reference information as required pursuant to *Section III(B)* on pages 13 and 14 herein.
- **Required Documents:** Any documents or other information specifically requested pursuant to *Section II(M) and (N) on page 9 herein, which documents can be found in Exhibits D and E on annexed hereto.*
- **Compliance Matrix:** A completed copy of the Compliance Matrix set forth in *Section III(D)* hereinafter on page 18 herein.
- **Price Proposal:** A Completed Price Proposal using the forms attached hereto as Exhibit "C".

C. Calendar

The IFB Calendar is set forth in *Table 2* below. SUNY-DMC reserves the right, in its sole discretion, to modify any event, time, or date in the IFB Calendar. SUNY-DMC will notify all vendors (that submitted intention to bid forms) via addendum of any changes to the IFB Calendar.

Table 2 – IFB Calendar

	Event	Day	Date	Time
1	Release of IFB	Mon.	1/28/13	
2	Offerors' Intention to Bid or No Bid Response Form due*	Thurs.	1/31/13	5:00PM
3	Written questions due from Offerors	Tues.	2/05/13	12:00 Noon
4	Official response to Offerors' questions due *	Thurs.	2/14/13	
5	Closing date for receipt of Proposals	Thurs.	2/21/13	10:00 AM

*To be sent via email to herb.goldberg@downstate.edu

**Date is estimated.

D. Bid Opening

A bid opening will be held on **Thursday, February 21, 2013 at 10:00 A.M. EST**. The location of the opening will be:

SUNY Downstate Medical Center
 Procurement Department
 151 East 34th Street, Room AF105
 Brooklyn, New York 11203-2098

There is no pre-bid conference scheduled in connection with this procurement.

E. State Finance Law Section 139(j) and (k)/Contact Restrictions

Pursuant to State Finance Law (“SFL”) Sections 139(j) and (k) (collectively, the “Procurement Lobbying Law”), this solicitation imposes certain restrictions on communications between SUNY-DMC and an “Offeror” during the “Restricted Period.” Restrictions are expounded in considerably more detail in the documents pertaining to the Procurement Lobbying Law attached hereto as *Exhibit “B”*. Vendors must affirm their understanding of, and agreement to comply with, the provisions of the Procurement Lobbying Law and with SUNY-DMC’s policies promulgated thereunder by signing and returning to SUNY-DMC (no later than the date fixed for submission of “Intention to Bid” Forms hereunder) the Procurement Lobbying Law Affirmation of Understanding and Adherence (collectively, “Procurement Lobbying Law Affirmations” or “Affirmations”), a copy of which document can be found in *Exhibit “B”* attached hereto. ***Affirmations MUST be returned AS SOON AS POSSIBLE, but in no event later than the date on which Offerors’ Intent to Bid forms are due (as set forth in Table 2). Failure to timely return Affirmations may result in disqualification from consideration hereunder.***

F. IFB Inquiries

Any questions pertaining to this IFB MUST (i) be in writing, (ii) reference the IFB section(s) in question and (iii) be submitted by email ONLY to the following SUNY-DMC representatives:

Herb Goldberg, Contracts Officer
 SUNY-DMC Contracts & Procurement Management Department
 (718) 270-3741 - phone
 Herb.Goldberg@downstate.edu

Maureen Crystal
Director of Contracts
SUNY-DMC Contracts & Procurement Management Department
(718) 270-1976 - phone
Maureen.Crystal@downstate.edu

Any inquiries, problems or other issues with any requirements/specifications or other terms and conditions set forth herein must be documented and submitted in accordance with this Section prior to the closing date/time for inquiries. A vendor's failure to notify SUNY-DMC of any such issue shall constitute a waiver of such vendors' right to contest or otherwise object to any requirements, terms or other specification herein imposed.

All questions must be received by the date and time specified in the IFB Calendar on Page 6 of this IFB. Pursuant to SFL 139(j) and (k), except as specifically provided under the law, **Vendors may submit questions ONLY to the foregoing individuals**, and are strictly prohibited from "contacting" any other SUNY-DMC employees in connection with this procurement.

G. Vendor Review of IFB.

Should any interested Vendor find a discrepancy in any part of these specifications or find the terms and conditions incomplete or otherwise questionable in any respect, Vendor shall, in writing, immediately call such matters to the attention of a SUNY-DMC representative referenced above. The submission of a bid shall be deemed a representation that such Vendor understands the requirements of this solicitation, has conducted sufficient investigation so as to be aware of the nature of the work to be performed and the requirements of the IFB, and is prepared to contractually obligate itself to perform the required services.

H. Addenda

Any addendum issued to Vendors prior to the date of receipt of bids shall become a part of these specifications, and all bids are to take into account the work therein described. Acknowledgment of the receipt of all amendments, addenda, and changes issued shall be required from all Vendors receiving the IFB by signing and returning one (1) copy of the Cover Sheet to the Contract Officer (see General Instructions, above) by the IFB due date and time. Failure of a Vendor to acknowledge receipt of any Addendum shall not relieve the Vendor of complying with the terms thereof.

I. Bid Confidentiality/Freedom of Information Law

To the extent permitted by law, SUNY-DMC will not disclose the details of an Offeror's bid, except for purposes of evaluation, prior to approval by the State Comptroller of the resulting contract(s). As previously provided, all material submitted becomes the property of SUNY-DMC and may be returned at SUNY-DMC's sole discretion. SUNY-DMC reserves the right to use any and all ideas (that are not identified as trade secrets) presented in any response to the IFB.

If an Offeror believes that any information in its bid package constitutes a "trade secret," as that term is defined by the New York State Freedom of Information Law, Article 6 of the Public Officers Law, and seeks an exemption from disclosure thereof, the Offeror shall submit with its bid a letter, specifically identifying by page number, line, or other appropriate designation, that information that is alleged to be a trade secret and setting forth in detail the basis therefor. Failure

by an Offeror to submit such a letter with its offer identifying alleged trade secrets shall constitute a waiver by the Offeror of any rights it may have under Section 89 (Subdivision 5) of the Public Officers Law relating to the protection of trade secrets.

SUNY-DMC will not consider Offeror information to be a trade secret if such information is not identified as a trade secret by the Offeror and so designated in the bid, or if that information:

1. Was known to SUNY-DMC before submission of such bid; or
2. Properly became known to SUNY-DMC thereafter through other sources; or
3. Is in the public domain.

J. Incurred Costs

The State of New York or SUNY-DMC will not be liable for any costs incurred by Vendors in association with the preparation or presentation of a bid.

K. Method of Contract Award and Contractor Performance

SUNY-DMC intends to award a five-year contract to each timely bidder that it finds to be responsible and responsive to the IFB.

During the term of the contracts, SUNY-DMC will call upon contractors, as needed, to provide temporary nursing services for any of several clinical departments as set forth in the Detailed Specifications section of this IFB. Whenever a need for nursing arises, SUNY-DMC will give priority to the contractor with the lowest billing rates for the category of nurse required (based on the pricing proposed by the bidders on Exhibit "C") and will call upon that contractor first. Should the lowest priced contractor be unable to meet SUNY-DMC's requirements, SUNY-DMC will turn to the next lowest-priced contractor in that category then, if necessary, to the third lowest and so on. Ranking for each category will be based solely on the pricing as bid, or as may be subsequently revised during the term of the contract as described in this IFB.

The bidder's proposed "Hourly Bill Rate" for a category will constitute 97% of its price to determine its rank for that category, its "Hourly Pay Rate" will constitute 3% of its price. For example, if a bidder's bill rate for a certain category of nurse is \$40 an hour, and its pay rate for that category of nurse is \$35 an hour, that bidder's price for that category of nurse, for ranking purposes, would be \$39.85 an hour. This figure is derived as follows:

$$\begin{array}{r} \$40 \times 97\% = \$38.80 \\ \$35 \times 3\% = \$ 1.05 \\ \hline \$39.85 \end{array}$$

Each contractor will be allowed to propose an adjustment of its rates, upward or downward, for any or all categories of personnel once a year. Such proposed adjustment must be made in writing and sent to SUNY-DMC's Contracts Department so as to be received no later than sixty (60) calendar days prior to the start of each year of the contract (i.e. if a contract has a start date of May 15, 2013, the contractor may, in any year or years during the contract term, submit a proposed rate change so as to be received by SUNY-DMC's Contracts Department no later than March 15th. Proposed rate changes must be consented to by SUNY-DMC and will be

incorporated into a contract amendment to take effect on the anniversary date of the contract, subject to the approval of the Office of the State Comptroller. Any proposed increase may not exceed the lesser of (a) any increase in the Consumer Price Index (CPI) as reported by the United States Labor Department for the New York City metropolitan area (CPI-U, New York, All Items) for the twelve months ended ninety days prior to the contract anniversary date and (b) two percent (2%) of the contractor's then-current rate for the category for which an increase is being sought. It will be the contractor's responsibility to the document, at the time of its request, the CPI increase described in (a) hereinabove.

Any proposed adjustment that is accepted by SUNY-DMC, and approved by OSC for any category or categories of nurse may alter the adjusting contractor's standing/ranking in terms of contractor selection for that category or categories.

The awarded contracts will be reviewed periodically at SUNY-DMC's discretion to evaluate the contractors' performance thereunder. SUNY-DMC personnel familiar with the Contractor's performance will, at least twice during each contract year, assess same to determine the performance quality of the contractor and its personnel. An unsatisfactory evaluation of any contractor may be the basis for terminating that contractor's agreement with SUNY-DMC.

In the event that SUNY-DMC determines that a contractor's performance is unsatisfactory, it will provide that contractor with written notice of the basis of such determination and of its intent to terminate that contract. The contractor shall have five (5) business days from the date of SUNY-DMC's notice to respond and/or contest such determination and shall be afforded due process. A final determination by SUNY-DMC of unsatisfactory performance, following resolution of any response or contest, shall result in termination of that contractor's contract with SUNY-DMC.

L. Notification of Offerors Not Selected

Once SUNY-DMC has notified the successful Offerors, SUNY-DMC will notify in writing all other Offerors that their bids did not result in contract awards (i.e. those Offerors not be found to be responsible or whose proposals are found to be non-responsive). As soon as possible following SUNY-DMC's receipt of a request therefor, SUNY-DMC will debrief any unsuccessful Offeror that requests a debriefing. The debriefing will be limited to the bid submitted by the requesting Offeror.

Unsuccessful Offerors may contact SUNY-DMC to request its then-current protest policy (the "Protest Policy"), which Protest Policy outlines the policies and procedures promulgated by SUNY-DMC with respect to protests.

M. Legal Compliance

All Offerors and their employees and personnel must be aware of (and comply with) the requirements of: (1) New York State Public Officers Law, (2) State Finance Law §§139-j and 139-k, (3) the Health Insurance Portability and Accountability Act of 1996 and laws, policies and procedures promulgated thereunder as set forth in the Business Associates Agreement attached hereto as **Exhibit "D"**, (4) other applicable provisions of New York State ("NYS") and federal law, and (5) all codes, rules, and regulations that derive from State laws and that establish the

standards for business and professional activities of State employees and govern the conduct of employees of firms, associations, and corporations in business dealings with NYS. *In signing its bid, each Offeror guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc. involving NYS and/or NYS employees. Failure to comply with those provisions may result in disqualification from the bidding process and other civil or criminal proceedings as may be required by law.*

N. State of New York Vendor Forms

Any Vendor that submits a bid hereunder must complete and submit, along with its bid, the requisite New York State Vendor forms (the "NYS Forms"), copies of which are attached hereto as **Exhibit "E"**.

O. SUNY-DMC's Rights

In accepting and evaluating bids, and awarding the contracts resulting from this IFB, SUNY-DMC, in its sole discretion, reserves the right to:

1. Disqualify an Offeror from receiving an award if such Offeror, or anyone in the Offeror's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
2. Revise/amend any provision of this IFB by written notification to Offerors prior to initial receipt of bids.
3. Reject any and all bids received as a result of this IFB.
4. Require a Vendor to submit such additional information bearing upon the Vendor's ability to perform the requested services as SUNY-DMC deems appropriate.
5. Consider any other information otherwise available to it concerning the financial, technical and other qualifications and abilities of the Vendor.
6. Cancel this IFB, in whole or in part, at any time before award. This IFB creates no obligation on the part of SUNY-DMC to award a contract
7. Waive procedural technicalities in proposals received, after prior notification to the Offeror, including the right to waive or modify minor irregularities in the proposal or adjust/correct arithmetical errors. Notwithstanding the foregoing, notification and concurrence of the Vendor shall not be required to waive or modify non-material irregularities in proposals.
8. Incorporate into and/or make a part of the final contract, the contents of the selected bid and any written questions and answers exchanged during the bid process. Should negotiations with a vendor fail to result in an acceptable contract, SUNY-DMC reserves the right to terminate negotiations with that vendor.
9. Eliminate any requirement that is found to be unmet by all Offerors and deemed non-material.
10. Make inquiries, at SUNY-DMC's discretion and by any means it may choose, into the Offeror's background or statements made in the proposal to clarify or to determine the truth and accuracy of all statements made therein.

P. Non-Responsiveness Determinations

SUNY-DMC reserves the right to deem “non-responsive” any Bidder(s) that fails to comply in any material respect with the instructions or other requirements set forth in this solicitation document. SUNY-DMC shall promptly notify Bidder(s) deemed non-responsive of such determination. Bidder(s) notified of such a determination shall have five (5) business days (from the date of notice) to respond to and/or contest such determination, and shall, without exception, be afforded due process. A final determination of non-responsiveness, following resolution of any response or contest, shall result in the disqualification of non-responsive bidder(s) from consideration hereunder.

For additional process-related information, bidders should contact the designated contacts hereunder, whose names and contact information are set forth above in Section III, Administrative Considerations – Paragraph F – “IFB inquiries” on pages 6 and 7.

Q. Prime Vendor

Notwithstanding anything to the contrary herein or in any other document (including a Vendor’s bid), it is understood, acknowledged and agreed that SUNY-DMC will enter into privity of contract with **only the entities submitting bids hereunder** (the “Contractors”), which entities shall accept and assume full and sole responsibility for the performance of the terms and conditions of their respective Contracts. For the avoidance of doubt, SUNY-DMC will consider the Prime Vendor the sole vendor with regard to all rights, obligations, liabilities or any other terms or performance under its Agreement. If any vendor’s bid includes performance of any sort or kind by a third party, such proposed arrangement shall not, in any way, whether contractually or otherwise, impact SUNY-DMC’s relationship with the Prime Vendor, who shall remain solely responsible for adherence to the terms of the Contract.

R. Group Pricing Organization Discounts

SUNY-DMC is a member of the Greater New York Hospital Association and University Hospital Consortium, Premier, Novation and Med Assets group purchasing. If the Vendor has a relationship with any of these associations, the most favorable pricing, pursuant to each relationship, or in addition to such discounts, should be used to give SUNY-DMC the most favorable pricing possible.

S. Bids binding for 150 Days

Any bid submitted hereunder shall constitute an offer binding upon the Vendor for a minimum of one-hundred fifty (150) days following the opening of bids (the “Binding Period”) and shall remain in effect until: (i) a contract resulting herefrom receives final approval, or (ii) the IFB is formally canceled by SUNY-DMC, or (iii) Vendor, once the Binding Period has elapsed, revokes its bid. To revoke its bid once the Binding Period has elapsed, a bidder must submit a written request, in the manner prescribed for submission of inquiries hereunder, that its offer (bid) be withdrawn from consideration such requests should be directed to the individuals whose names and contract information appear in Section II – Paragraph F on pages 6 and 7 herein.

T. Contract Provisions

Any contracts entered into as a result of this IFB (each, a “Contract,” collectively, the “Contracts”) will contain the contract terms and conditions set forth in Section V, Contract Provisions, of this IFB as well as the terms set forth in Exhibit “A” and “A-1” attached

hereto and any other required terms. Offerors' bids must be formulated based on such terms and conditions. SUNY-DMC will expect all successful bidders to enter into contracts containing all of the terms and conditions in this IFB and its exhibits. As indicated earlier, the bidder must state in the transmittal letter accompanying its bid that it will contractually agree to all the terms and conditions set forth in the IFB and its exhibits. If a bidder has an objection to any such term or condition, it must specifically state so in the transmittal letter. By failing to do so, the bidder will forfeit any right to subsequently object to any term or condition set forth in the IFB or its exhibits.

The term of each of the awarded Contracts will be five (5) years, subject to regulatory approval where applicable.

The Contracts will contain language that ensures that unless the Contract is revised by an Amendment approved by the Office of the New York State Comptroller, the Offeror/Contractor will provide all required services and deliverables of this IFB as described, for the pricing quoted in the Offeror's bid and accepted by SUNY-DMC. Additionally, the Offeror/Contractor will perform according to the performance standards set forth in this IFB and the Offeror's Proposal.

SECTION III

IFB REQUIREMENTS/DETAILED SPECIFICATIONS

A. Qualifications of Vendor

1. Experience:

- a. Proposals will be considered only from firms that are regularly engaged in the business of providing temporary nursing services and/or medical technician services (the "Services") to hospitals and that have at least five (5) years of verifiable experience in providing such services for hospitals similar to SUNY-DMC in size and scope. Firms must be able to produce evidence that they have an established satisfactory record of performance, and that they have sufficient staff, financial support and organizational capacity to carry out and perform the services as described hereunder if awarded a contract under the terms and conditions of this IFB.
- b. Any nurse assigned under a contract awarded pursuant to this IFB must have the requisite experience as indicated on Exhibit C in the category required.

2. **Licenses:** Vendors must have, and, at their sole cost and expense, must maintain through the term of the contracts resulting herefrom, all permits, licenses and authorization to perform under such contracts as may be required by the City of New York, the State of New York, the Federal Government, and by any other governmental authority with jurisdiction over the subject matter of, or the parties to, such contracts. All assigned nurses must have and maintain all licenses and/or certifications required to perform the services for which they are assigned in accordance with this IFB.

3. **Evidence of Qualifications:** SUNY-DMC reserves the right, before awarding the contract, to require the Vendor to submit such evidence of its qualifications as SUNY-DMC may deem necessary, and may consider any evidence available to it of the financial, technical, and other qualifications and abilities of a Vendor, including past performance, in making an award that is in the best interest of SUNY-DMC.

4. **Restrictions:** The successful Vendor shall not assign, transfer, convey, sublet or otherwise dispose of this contract, or any of its titles, interests herein, or its power to execute such a contract to any other person, company, or corporation.

B. References

Vendor shall submit completed Reference Forms for at least three (3) hospital customers (other than SUNY-DMC) of comparable size and scope to, and having similar requirements as, SUNY-DMC, for which Vendor is either currently providing, or in the past three (3) years has provided, services similar to those sought herein.

The customers on the list may be contacted by SUNY-DMC, and must provide positive references for the subject Vendor. SUNY-DMC reserves the right to review and consider other known clients of the Vendor in addition to those the Vendor provides, and to disqualify a bidder based on unsatisfactory reports and records of services provided. If requested by Vendor, the list of references will be kept confidential, except where disclosure is required by law. Vendor shall not include SUNY-DMC as one of its references.

Reference Submission

*For each Reference, Offerors shall use the Reference Form attached hereto as **Exhibit "F"**, and shall include the name and address of its customer, a description of the scope of services it provides/provided for the customer and the name, title and contact information (telephone number and e-mail address) of the individual who SUNY-DMC is to contact.*

OFFERORS MAY NOT USE SUNY-DMC AS A REFERENCE HEREUNDER.

Vendor shall also submit, if applicable, a list of hospitals for which it once provided, but is no longer providing, temporary nursing services, along with the reason(s) for the discontinuation of services at each such hospital.

C. Staffing

The successful vendors shall be prepared to staff positions full-time on an "as requested" basis for any or all titles for which rates are requested. Using Exhibit C, each bidder must propose hourly billing rates, as well as indicate the hourly rate that the bidder pays its nurses, for each title. The contract awardees will be expected to pay for any and all expenses including, *inter alia*, travel expenses, housing and other ordinary costs associated with the placement of personnel at SUNY-DMC. Bidders should consider all such costs and factor them in when calculating their proposed rates. Ranges of billing rates and/or add-on fees will not be accepted.

If a vendor does not wish to bid on any particular position(s), it should place an "N/A" in the "hourly pay rate" and "hourly bill rate" boxes on Exhibit C, and not leave any bill rates/pay rates blank.

D. Detailed Specifications

Requests by SUNY-DMC

SUNY-DMC will submit its nursing requests to contractor as follows:

1. For Normal Needs – SUNY-DMC will submit its nursing needs to each contractor agency once a month. The agency will have one (1) week to fulfill same.
2. For Emergency Needs – SUNY-DMC will call the contractor agency as soon as the need arises. The contractor agency will have two (2) hours to respond.

The Contractor's Obligations

The contractors will provide a dedicated pool of New York State licensed nurses and/or medical technicians, in the respective categories as required, with such qualifications and experience as set forth on Exhibit C.

The contractor will provide pre-job training to personnel prior to assignment at SUNY-DMC. The training must include, but not be limited to, the following:

1. Introduction to safety measures and procedures.
2. Personal appearance, grooming and courtesy.
3. Legal rights and responsibilities.
4. Other requirements as SUNY-DMC may indicate to the contractor.

The contractor will file all completed credential files in connection with any nurse or medical technician with SUNY-DMC's Department of Nursing **before** that nurse or medical technician will be permitted to begin work. No nurse or medical technician assigned by the contractor will be permitted to begin work without evidence of appropriate credentials.

The contractor will maintain current credentials on all of its personnel and will provide updated files to SUNY-DMC every six (6) months.

The contractor will provide only personnel that is physically able to perform the work assigned to them and who are free from any communicable diseases. The contractor will provide, in connection with each nurse or medical technician it provides, documentation of physical exam, including TB testing and chicken pox and measles testing before that nurse or medical technician begins work at SUNY-DMC.

All personnel assigned by a contractor to SUNY-DMC hereunder in the following speciality areas will be required to take and pass, prior to performing, unit-based written examinations which SUNY-DMC will administer:

- a. ICU
- b. NICU
- c. ED
- d. Interventional Radiology/Special Procedure
- e. Cardiac Cath Lab
- f. OR
- g. Recovery Room
- h. Labor and Delivery

(Labor and Delivery nurses will also be required to pass the Fetal Monitoring Examination administered by SUNY-DMC).

The contractor will provide the following:

- a. Orientation to any personnel prior to providing such personnel for assignment at SUNY-DMC.
- b. Annual CPR certification/re-certification where appropriate.
- c. Physical exams (completed Certificate of Health statement).
- d. Proof of compliance with applicable JCAHO standards.
- e. Annual personal/patient safety update.

For each nurse or medical technician it provides, as applicable, the contractor will provide the following credentials for evaluation to the Director of Staffing at least one week before the scheduled orientation:

- a. Current copy of Licensure duly verified against the original
- b. Evidence of mandatory Training required by SUNY-DMC
- c. Current copy of BCLS, ACLS, PALS/NRP
- d. Copy of Pharmacology Examination
- e. Copy of results of examination for special areas
- f. Two references
- g. Work history
- h. Copy of current physical exam as required by SUNY-DMC

Hours and Payment Therefor

Nurses and medical technicians provided hereunder will generally be required to work the same shifts and hours as SUNY-DMC personnel, categorized as follows:

- a. Days – 7:30 A.M. to 4:00 P.M. (one (1) hour meal break)
- b. Evenings – 3:30 P.M. to 12 midnight (one (1) hour meal break)
- c. Nights – 11:45 P.M. to 7:45 A.M. (one-half hour meal break)
- d. 12 Hour Days – 7:30 A.M. to 8:00 P.M. (one and one-quarter (1 ¼) hour meal break)
- e. 12 Hour Nights – 7:30 P.M. to 8:00 A.M. (one and one-quarter (1 ¼) hour meal break)

Contractor will be paid only for the time its personnel actually work, and will not be reimbursed for meal time, i.e. Contractor will be paid for seven and one-half (7 ½) hours for Day, Evening and Night shift nurses and medical technicians and for eleven and one-quarter (11 ¼) hours for 12 Hour Day or Night shift nurses and medical technicians.

If a nurse's or medical technician's work schedule does not include 12-hour shifts, and it becomes necessary for that nurse or medical technician to work in excess of forty (40) hours a week for SUNY-DMC, SUNY-DMC shall be billed for such excess hours at the rate of one and one-half (1 ½) times the Contractor's regular pay rate (not the bill rate) as indicated in Exhibit C.

To accommodate 12-hour shifts, a nurse or medical technician whose schedule includes 12-hour shifts will be paid for at the rate of one and one-half (1 ½) times the regular pay rate (not the bill rate) after working in excess of eighty (80) hours within a two-week period.

SUNY-DMC will not pay for work performed by a nurse or medical technician during a scheduled meal break as determined by the standard meal break for that department. All payments for overtime must be pre-approved by the departmental supervisor in which the nurse or medical technician is working. The Contractor will not be paid at the overtime rate for time worked by its nurse or medical technician beyond the end of his or her shift if such work is necessitated by the Contractor's failure to timely provide replacement personnel after having been requested by SUNY-DMC to do so.

SUNY-DMC recognizes only seven (7) holidays that qualify for holiday pay if worked by a temporary service worker, including any nurse provided hereunder. These holidays are: New Year's Day, Martin Luther King, Jr.'s birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. If it becomes necessary for a nurse provided hereunder to work on any of said days, the Contractor may bill SUNY-DMC for such nurse's services at the rate of one and one-half (1 ½) times the regular pay rate (not the bill rate) as indicated in Exhibit C.

SUNY-DMC will not provide any fringe benefits to the nurses. The Contractor will provide its nurses any fringe benefits that it provides to its temporary service employees.

Personnel provided hereunder will be responsible for their own uniforms, which shall conform to acceptable industry-wide standards for nursing attire.

SUNY-DMC will not take any action to directly solicit or otherwise encourage Contractor's personnel to apply for permanent employment at SUNY-DMC during the first thirteen (13) weeks of that personnel's assignment at SUNY-DMC. In the event that SUNY-DMC should thereafter hire any member of the Contractor's per diem staff, SUNY-DMC will notify the Contractor thirty (30) days prior to the commencement of that staff member's employment. In no event will SUNY-DMC afford any means of compensation to the Contractor.

E. Eligibility Criteria

To be considered a “responsive” vendor eligible for award hereunder, a bidder must be capable of meeting all requirements set forth in this *Section III, IFB Requirements/Detailed Specifications, pages 12 through 17 herein* including those requirements listed in the Eligibility Criteria Grid (the “Grid”) below. To be considered responsive, Vendor must complete the Grid and acknowledge and affirm its ability to perform in accordance with the items, requirements and other specifications listed therein by responding in the affirmative in the appropriate section(s) therein. Completed Grids must be included in Vendor’s bid package. Either (i) a Vendor’s failure to respond to any of the items in the Grid or (ii) a Vendor’s provision of a negative response to any item in the Grid will result in the disqualification of that Vendor from consideration hereunder, as such Vendor will be considered “Non-Responsive.”*

<u>Requirements</u>	<u>Yes</u>	<u>No</u>
Vendor warrants that it currently possesses sufficient staff, financial support and organizational capacity to carry out and perform the Services as detailed in IFB #13-01.		
Vendor shall, at all times, make available to SUNY-DMC adequate personnel to perform the Services.		
Any personnel to be assigned by vendor to SUNY-DMC shall have at least the requisite experience for that category of personnel as indicated in Exhibit C to this IFB.		
Vendor has at least five (5) years experience providing temporary nurses and/or medical technician to hospitals similar to SUNY-DMC (i.e. UHB) in size and scope.		
Vendor possesses all necessary certifications and licenses to perform the Services.		
Vendor acknowledges its understanding of and agreement to comply with the terms set forth in this IFB.		

*NOTE: In the event of any confusion or uncertainty with regard to the Grid or the specific information or other requirements set forth in this IFB, Vendors are advised not to submit a bid hereunder until uncertainty/confusion has been resolved, as such confusion may result in disqualification of Vendor’s bid if its bid is determined to be Non-Responsive. Instead, Vendor should submit a written inquiry requesting clarification in the manner set forth in *Section II, Administrative Considerations, Paragraph F, pages 6 and 7.*

SECTION IV

PRICE PROPOSALS

The bidder must complete the Price Proposal page and associated documents attached hereto as **Exhibit “C”** in accordance with the instructions therein. The bidder must provide detailed price information by category, in accordance with the Price Proposal pages, which prices shall be inclusive of any and all expenses including, but not limited to travel, meals and lodging. Bidder acknowledges that SUNY-DMC will rely on its Price Proposal as bidder’s proposed pricing for the provision of the Services in accordance with the terms of this IFB. Contractors will be permitted to adjust their pricing, upward or downward, one time a year, which adjustment, if approved by the Office of the New York State Comptroller, will take effect on the anniversary date of the contract. The Contractor must advise SUNY-DMC of such proposed adjustment in writing so as to be received by SUNY-DMC no later than sixty (60) calendar days prior to the anniversary date of the contract, as explained on Pages 8 and 9 hereinabove. **Contractors’ compensation under the Contract will be limited to, and governed by, the Price Proposals submitted hereunder or subsequent adjustments thereto, if any, as may be approved by the Office of the New York State Comptroller.**

Price Proposal Grid: Using the grid in the Price Proposal, the bidder must propose hourly billing rates, as well as indicate the hourly rate that it pays its personnel for each respective title. If the bidder does not wish to bid on any particular title(s), it should place an “N/A” in the “hourly pay rate” and “hourly bill rate boxes on Exhibit C, but should not leave any bill rates/pay rates blank.

Inquiries relating to Price Proposal: The bidder’s Price Proposal (the rates provided by bidder in Exhibit “C” herein) must factor in any and all costs associated with the services to be provided. In the event of any confusion or uncertainty with regard to the specific Price Proposal information required by SUNY-DMC, a vendor should not submit a bid hereunder until such uncertainty/confusion has been resolved, as such uncertainty/confusion may result in disqualification of that vendor’s bid if its bid is determined to be non-responsive. In the event of any confusion or uncertainty, a prospective bidder should submit a written inquiry during the question and answer period prescribed hereunder requesting clarification in the manner set forth in **Section II**, Administrative Considerations, Section F, pages 6 and 7 hereinabove.

Guarantee: By submitting a response to this IFB, the bidder warrants, represents and guarantees that the pricing offered is the same as, or lower than, the pricing that it offered by that bidder to any governmental or commercial account for similar services within the six (6) months prior to the date of its bid.

Additional Services: By submitting a bid hereunder, the bidder acknowledges and agrees that it will be compensated only for providing those services requested herein and for which it has proposed its pricing. SUNY-DMC will not be responsible for any costs other than for the services outlined hereunder, and for which such bidder has actually proposed pricing in its bid.

SECTION V
CONTRACT PROVISIONS

A. Introduction

Once contracts are awarded to bidders as a result of this IFB, SUNY-DMC and such bidders (each a “Contractor,” hereinafter collectively, with SUNY-DMC, referred to as the “parties”) will negotiate and execute contract documents (each a “Contract,” collectively, the “Contracts”) setting forth the rights and responsibilities of the parties with regard to the services described in this IFB. It is anticipated that the Contracts will consist of, at a minimum, the terms set forth in *Sections II, III, and V* of this IFB.

During the Question period (as defined in the IFB Calendar in Section II hereinabove), prospective bidders that have any objections to any of the terms that will comprise the Contract, are required to identify such objections in writing. Submission of a bid will be deemed a representation that the bidder, if awarded a contract, agrees to enter into a contract with SUNY-DMC containing, at a minimum, such terms and conditions as are contained in Sections II, III and V of this IFB.

For the purpose of the Contracts, SUNY-DMC will consider the Contractors as independent contractors engaged in providing services for SUNY-DMC. The Contractors will not be agents of SUNY-DMC or the State of New York.

In addition to the provisions of this IFB, each Contract shall consist of such other documents as are described hereinafter.

B. General Contract Terms & Conditions

The following numbered paragraphs represent the general terms and conditions that will be included in the Contract entered into by the parties.

1. Merger

The Contracts governing the rights and responsibilities of the parties thereto shall be deemed inclusive of the following items:

1. That portion of the Contract preceding the signatures of the parties in execution;
2. The appendices attached to the Contract;
3. The Invitation for Bid #13-01 entitled Provision of Temporary Nursing and Medical Technician Services that was issued by SUNY-DMC (hereinafter “the IFB”), and appendices thereto, as may be modified by SUNY-DMC and by official SUNY-DMC responses to questions (i.e., Questions and Answers); and
4. The pertinent part of the Contractor’s bid, i.e. the Price Proposal and any other document included in the bid package that SUNY-DMC may deem pertinent.

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

- First: Appendix A, Standard Contract Clauses, State University of New York, Appendix A-1, Affirmative Action Clauses, State University of New York, Business Associates Agreement (Exhibit "D" of this IFB), Deficit Reduction Act Appendix (Exhibit "G" of this IFB);
- Second: the text of the Contract;
- Third: the IFB, including appendices thereto, as may be modified by SUNY-DMC and by official SUNY-DMC responses to questions (i.e., Questions and Answers); and
- Fourth: the Contractor's Price Proposal.

These documents constitute the entire Agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained therein shall be binding or valid and these contracts shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of both parties hereto and approved by the Office of the New York State Comptroller ("OSC").

2. Term

The Contract shall become effective upon the approval of OSC. The Contract term shall begin on the date of such OSC approval (unless an alternative date is specified therein). Unless terminated earlier as provided in the Contract, the Contract term shall be for five (5) years (the "Term").

3. Payment

The sole compensation for the Contractor under this Contract will be payment based on pricing indicated in the Contractor's Price Proposal provided in response to the IFB, which shall be inclusive of any and all expenses. Contractor shall invoice SUNY-DMC within ten (10) business days of any given calendar month for the nursing services it provided during the previous calendar month. Contractor's invoices shall set forth, at a minimum, the total amount being sought and a comprehensive break-down of each date for which it provided a nurse or nurses, the name of such nurse(s), the hours of service provided on each date billed for, as well as any back-up documentation as SUNY-DMC may, in its sole discretion, require. Payment shall become due thirty (30) days following SUNY-DMC's receipt of a Proper Invoice (as defined hereinafter) specifically detailing, inter alia, all of the above information.

Fees paid for which it is subsequently determined that the Contractor was not entitled must be reimbursed to SUNY-DMC. SUNY-DMC may do so by subtracting such fees from any payments that later become due to the Contractor under this Contract.

4. Payment Procedure

For all charges for which payment is sought, Contractor shall submit Proper Invoices (as hereinafter defined) to SUNY-DMC in accordance with the payment terms of Contractor's Price Proposal and those negotiated by the parties hereto, which invoices shall reference the Contract (the number assigned thereto), shall specifically detail all relevant information including, but not limited to, that information detailed above, as well as any substantiating or other supporting documentation reasonably requested by SUNY-DMC or OSC (hereinafter referred to individually as a "Proper Invoice" and collectively as "Proper Invoices"). The Contractor shall submit original Proper Invoices to SUNY-DMC at the following address:

**SUNY – Downstate Medical Center
450 Clarkson Avenue
Expenditure Processing – Box #54
Brooklyn, New York 11203-2098**

Additionally, the Contractor shall submit copies of said invoices to:

**SUNY Downstate Medical Center
450 Clarkson Avenue
Contracts Department - Box #63
Brooklyn, New York 11203-2098
Attention: Director of Contracts**

5. Taxes

SUNY-DMC represents and warrants that goods or services provided on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes.

6. Termination

- a. **Termination for Cause:** In the event that the Contractor materially breaches the Contract and fails to cure such breach within thirty (30) days after receipt from SUNY-DMC of written notice specifying the breach, SUNY-DMC may terminate the Contract effective immediately upon giving written notice of termination to the Contractor.
- b. **Termination for Convenience:** The State and SUNY-DMC retain the right to terminate the Contract at any time without reason, provided that the Contractor is given at least thirty (30) days written notice of the intent to terminate. This provision in no way alters SUNY-DMC's right to terminate the Contract for cause.

7. Contract Termination Provision

SUNY-DMC reserves the right to terminate this contract in the event it is determined that any of the certifications filed by **Contractor:** (a) in accordance with State Finance Law §§139-j and 139-k were intentionally false or intentionally incomplete or (b) in accordance with Tax Law Section 5-a were false or incomplete. Upon such determination, **State University** may exercise its termination right by providing written notification to **Contractor** in accordance with the written notification terms of the contract.

8. Waiver of Breach

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

9. Competencies Documentation for On-Site Personnel

- a. SUNY-DMC shall have no responsibility whatsoever as an employer with respect to the nurses supplied by the Contractor, i.e. withholding social security, unemployment compensation, or any other taxes mandated by law. The relationship of the contractor to SUNY-DMC shall be strictly that of an independent contractor.
- b. The Contractor shall be responsible for screening for competence all the nurses it assigns to work on SUNY-DMC property and for providing, on an individual basis, written certification to SUNY-DMC that each such nurse possesses the requisite employment eligibilities, education, training and experience required to perform the duties of the position performed on behalf of the Contractor at SUNY-DMC and has demonstrated competence in performing the duties required of the position.
- c. The Contractor must maintain a file including documentation of the competencies of each nurse or medical technician it assigns to work at SUNY-DMC and must make said file available via fax transmission to SUNY-DMC's Human Resources Department when requested, upon four (4) hours notice. At a minimum, such file must include for each individual a written job description, a completed job application or resume detailing the individual's competencies, including copies of any license, registration, certification and/or permits; evidence that the individual has received an initial SUNY-DMC orientation and attended annual Mandatory Education Program; evidence that the individual has had a physical examination within the last twelve (12) month period including TB testing, chicken pox and measles testing; and completed annual competency assessments, including age-specific competencies and assessments and current, up-to-date evaluation and appraisal tools.
- d. The Contractor shall be responsible for all background screening on all personnel it sends to DMC.

10. Compliance Training Requirements

The Contractor shall not allow a temporary worker to start an assignment prior to completing the Compliance Training requirements as set forth in SUNY-DMC's Compliance Training policy. Said policy is available on the web at <http://www.downstate.edu/compliance/policies.html>.

11. Contractor's Representations & Warranties

The Contractor hereby warrants and represents that:

- (a) It shall assume responsibility for the cost and timely accomplishment of all obligations and duties required by the Contract and shall ensure that all obligations and duties are carried out in a competent, professional and timely manner.
- (b) The Services provided under this Contract conform to the technical specifications provided in SUNY-DMC's Invitation for Bid (IFB).
- (c) It knows of no legal, business, or financial impediment at the time of execution, to the successful completion of its obligations pursuant to this Contract. If the Contractor learns of any impediment (including bankruptcy, receivership, etc.), the Contractor must notify SUNY-DMC of such

impediment immediately. Failure to do so during the course of the Contract will be considered a material breach.

- (d) It shall perform its obligations in accordance with all of the conditions, covenants, statements, and representations contained herein, during the Contract Term.
- (e) During the term of this Contract, Contractor will make available and provide the necessary levels of qualified personnel to ensure proper performance by Contractor of its obligations and responsibilities under this Contract; and all work will be performed in a professional, timely manner.
- (f) Services delivered or Services performed pursuant to this Contract shall conform to the specifications and performance standards set forth in the Contract and the IFB.
- (g) Contractor shall pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of SUNY-DMC that it meets or exceeds all requirements of the Contract and is in compliance with all applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workers' compensation, and shall provide such proof as required by SUNY-DMC. Failure to do so may constitute grounds for SUNY-DMC to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by SUNY-DMC.
- (h) All services performed pursuant to the Contract will be provided in a workmanlike manner in accordance with industry standards.
- (i) Failure by Contractor to perform Services, or any other impediment to performing Services, during time scheduled for the performance of Services shall excuse SUNY-DMC from any payments (including, but not limited to, any minimum payments), other than for Services properly provided in accordance with the terms hereof.

A breach of any provision of this section shall be deemed a "material breach" for purposes of default under this Contract.

12. Hold Harmless

The Contractor shall be fully liable for the actions of its agents, employees, partners, and subcontractors and shall defend, indemnify and hold harmless the State University of New York, the State of New York and SUNY-DMC and their officers, employees and agents from and against all liability, loss, damages and expense (including, without limitation, reasonable attorneys', accountants' and consultants' fees and court costs) incurred by or imposed upon the State University of New York and the State of New York in connection with any claim, suit, action, demand or judgment arising out of the Contractor's acts (including breach of the provisions hereof), omissions, negligence or willful misconduct in its performance of its obligations under this Contract. However, the Contractor shall not indemnify the State or SUNY-DMC to the extent that any claim, loss, or damage arising hereunder is caused by the negligent act or failure to act of the State or SUNY-DMC. The State and SUNY-DMC may retain such moneys from any amount due the Contractor as may be necessary to satisfy any claim for damages, costs, and the like asserted against the State or SUNY-DMC unless the Contractor at the time of the

presentation of the claim shall demonstrate to SUNY-DMC's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover any associated damages and other costs that may be claimed.

13. Limitation of Liability

Notwithstanding anything herein to the contrary, Contractor shall remain liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property attributable to the negligence or other tort of Contractor, its officers, employees or agents.

14. Hiring of Nurses or Medical Technicians by SUNY-DMC.

SUNY-DMC will not take any action to directly solicit or otherwise encourage any nurse or medical technician provided by the Contractor to apply for employment by SUNY-DMC within thirteen (13) weeks of such nurse's first day of assignment to SUNY-DMC hereunder. In the event that SUNY-DMC hires any nurse or medical technician provided by the Contractor, SUNY-DMC shall notify Contractor thirty (30) days prior to such individuals first day of service as a SUNY-DMC employee, but in no event shall any fee or compensation be afforded to the Contractor in connection to such hire.

15. Replacement of Personnel

SUNY-DMC may, in its sole discretion, for any reason, at anytime hereunder, direct Contractor to replace any nurse or medical technician(s) assigned pursuant to this Agreement with such other nurse or medical technician(s) as SUNY-DMC may find acceptable, or to recall any nurse or medical technician(s) assigned pursuant to this Agreement without replacing same.

16. Limitation of Contractor's Remedies against SUNY-DMC for payment breach.

If at any time during the term of the Contract resulting herefrom Contractor alleges breach by SUNY-DMC of its payment obligations hereunder, Contractor shall not withhold performance under this or any other Contract it may have with SUNY-DMC, provided that SUNY-DMC is pursuing payment in good faith. Contractor shall, instead, provide SUNY-DMC with notice, in accordance with the notice processes and procedures established under the Contract, which notice shall specifically detail the alleged breach and the remedial measures sought, and shall allow SUNY-DMC one hundred twenty (120) days to cure any such breach ("Curative Period"). In the event SUNY-DMC has commenced, but not completed, remedial actions during the Curative Period, SUNY-DMC shall confer with Contractor in good faith and the parties shall negotiate a reasonable extension to the Curative Period. In the event that SUNY-DMC is unable to resolve said breach during the Curative Period and any extensions thereto, Contractor may withhold performance, provided that Contractor shall not withhold service or any other performance where such withholding might unduly interfere with SUNY-DMC's delivery of healthcare or in any way endanger its patients, employees or visitors.

17. Infringement of Patent, Copyright, Trademark, Trade Secret or other Proprietary Right

To the extent applicable, Contractor will indemnify and hold the State of New York harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs that may be finally assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action,

claim, or suit at Contractor's sole expense, and (iii) all reasonable assistance in the defense of any such action at the expense of Contractor.

If principles of governmental or public law are involved, the State reserves the right to participate in the defense of any action identified in this paragraph.

18. HIPAA/Security Language

The parties agree to comply with the requirements of the Health Insurance and Portability and Accountability Act of 1996 as set forth in the Appendix to this Agreement annexed hereto as *Exhibit "D"* and made a part hereof.

To the extent applicable hereto, Contractor shall comply with the applicable provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

19. Subcontracting

The Contractor shall not subcontract any of the services it is to provide under this Contract without the prior consent of SUNY-DMC and the approval of OSC. That notwithstanding, the Contractor shall make every reasonable effort to subcontract, at a minimum, twelve percent (12%) of the total contract amount of New York State-certified minority owned business enterprises and eight percent (8%) of the total contract amount to New York State-certified women owned business enterprises. In the event Contractor subcontracts any of the services to be provided hereunder, the Contractor shall nonetheless remain fully and solely responsible for the performance of, and adherence to, all of the terms and conditions herein.

20. Assignment

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title, or interest therein, other than its right to receive payment; the right to receive payment may be assigned with the prior written consent of SUNY-DMC. Prior to an assignment of the right to receive payment pursuant to this Contract becoming effective, the Contractor shall file a written notice of such assignment simultaneously with SUNY-DMC and the New York State Comptroller.

All provisions contained in this Contract shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the parties hereto to the same extent as if each such successor or assign were named a party hereto.

21. Executory Clause

This Contract shall be deemed executory until the approvals required pursuant to New York State Finance Law (i.e. the approvals of the New York Office of the Attorney General and Office of State Comptroller) are obtained.

22. Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

23. Conflict of Interest

If during the term of the Contract and, if applicable, any extension thereof the Contractor becomes aware of an actual or potential relationship that may be considered a conflict of interest, the Contractor shall notify SUNY-DMC in writing immediately. Should the Contractor engage any current or former New York State employee as its own employee or as an independent contractor because of such employee's knowledge of New York State finances, operations or knowledge of the SUNY-DMC's operations, or any current or former State employee who in the course of his or her State employment had frequent contact with management-level Contractor employees, the Contractor shall immediately notify SUNY-DMC in writing. Should SUNY-DMC thereafter determine that such employment is inconsistent with State or Federal Law, SUNY-DMC shall so advise the Contractor, in writing, specifying its basis for so determining, and may request that the employee's or independent contractor's relationship be terminated with respect to the Contractor's relationship with SUNY-DMC.

24. Insurance

Contractor shall maintain for the duration of this Contract, at its own expense and at no cost to the State of New York, with insurance companies authorized to do business in the State of New York, the following types and amounts of insurance, covering all operations hereunder, whether performed by the **Contractor** or a subcontractor of **Contractor**:

- A) **Commercial General Liability** in the amount of \$1,000,000 single limit each occurrence, \$3,000,000 aggregate, to include:
 - (1) Contractor's Liability Insurance to cover all operations with respect to all services performed hereunder;
 - (2) Contractual Liability Insurance to cover the indemnification required hereunder.
 - (3) Products/Completed Operations;
- B) Workers Compensation
- C) **New York State Worker's Compensation Insurance and Disability Benefits Coverage** – **Contractor** shall submit either (i) proof (which proof must be acceptable to the Worker's Compensation Board (the "Board") of both New York Disability and New York Worker's Compensation coverage or (ii) Certificate of Attestation of Exemption (CE-200) form(s) establishing statutory exemptions from coverage requirements (where applicable, separate CE200 form may be required for Disability and Worker's Compensation). **ACORD FORMS ARE NOT CONSIDERED ACCEPTABLE PROOF.** Refer to the Board's website: <http://www.wcb.state.ny.us/> for further information.

- D) Automobile insurance (owned and non-owned vehicles) – no less than \$1,000,000 CSL each occurrence.

All certificates of insurance or evidence of insurance must contain a thirty (30) day written notice of any cancellation, change, or termination of coverage. All certificates must be filed with the Director of Contracts.

25. Severability

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

26. Omission of Services

SUNY-DMC reserves the right at any time during the term of this Agreement to omit any portion of the services called for herein as SUNY-DMC in its sole discretion deems necessary, without constituting grounds for any claim by Contractor for allowances of damages. Should any services hereunder be omitted pursuant to this provision, compensation to Contractor shall be adjusted pro rata to reflect such omission.

27. Public Officers Law Compliance

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

28. Security

SUNY-DMC's security arrangements call for the use of visitors' passes and/or photo identification cards. Prior to commencing performance under its contract, the Contractor will be responsible for obtaining for each member of its staff to be assigned to on-campus work either:

- a. a Visitor's Pass from University Police (718) 270-3362 for any staff member expected to be on campus three days or less; or
- b. a Limited Access Downstate photo ID card from the Downstate Card Office (718-270-4600) for any staff member expected to be on campus more than three days.

In either event, all Contractor personnel will be required to wear such identification while on campus and, upon completion of his/her assignment, will be required to return such identification to the appropriate office as set forth above. The Contractor and/or the Contractor's personnel shall be

responsible to keep their card secure and are subject to the then current card replacement fee if a card is lost or stolen (presently the replacement fee is \$20.00).

29. Consultant Disclosure Legislation

The Contractor will comply with the reporting requirements of State Finance Law Sections 8 and 163 as amended by Chapter 10 of the Laws of 2006 as follows:

(a) Initial Reporting Requirement. Contemporaneous with the execution of the Agreement, Contractor will complete and submit to SUNY-DMC's Contracts Department a Form A: "State Consultant Services Contractor's Planned Employment from Contract Start Date through End of Contract Term". This form captures the planned employment information prospectively from the start date of the contract through the end of the contract term.

(b) Annual Reporting Requirement.

In addition to the Initial Reporting Requirement, the Contractor will complete and submit to SUNY-DMC, OSC and the Department of Civil Services ("DCS"), a State Consultant Services Contractor's Annual Report, capturing historical information, detailing actual employment data for the most recently concluded State fiscal year. The Annual Reports will be due by the May 15th following each fiscal year (April 1st through March 31st) during which the contract is in effect.

30. Iran Divestment Act

As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services ("OGS") is charged with developing a list ("prohibited entities list") of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL Section 165-a(3)(p), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Agreement, the Contractor understands that during the term of this Agreement, the Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize, in connection with the Agreement, any subcontractor that is identified on the prohibited entities list.

Additionally, the Contractor understands that during the term of the Agreement, should SUNY-DMC receive information that a person is in violation of the aforesaid certification, SUNY-DMC will offer such person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is violation of the Act, then SUNY-DMC shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Contractor in default of the Agreement.

SUNY-DMC reserves the right to reject any renewal, extension or request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

EXHIBIT A

STATE UNIVERSITY OF NEW YORK

STANDARD CONTRACT CLAUSES

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

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

2. **PROHIBITION AGAINST ASSIGNMENT** Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller

approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

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

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither 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 prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

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

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

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies 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, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from

public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age,

disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY 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, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), 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. Contractor will have thirty (30)

calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to

SUNY;

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search 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 SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

21. RECIPROCITY AND SANCTIONS

PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this

provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient

for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

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

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

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

27. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

28. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

EXHIBIT A-1

STATE UNIVERSITY OF NEW YORK

AFFIRMATIVE ACTION CLAUSES

1. **DEFINITIONS.** The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an 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.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a

women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. **TERMS.** The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group

members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action 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) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University 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, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Except for construction contracts, prior to an award of a State Contract, the Contractor shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State Contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency. If Contractor fails to provide a staffing plan, or in the alternative, a description of its entire work force, the University may reject Contractor's bid, unless Contractor either commits to provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same.

(e) After an award of a State Contract, the Contractor shall submit to the University a workforce utilization report, in a form and manner required by the agency, of the work force actually utilized on the State Contract, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the University.

(f) The Contractor shall include the provisions of this section in every Subcontract

in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(g) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(h) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(i) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(j) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

2. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and woman owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the

value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

3. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

4. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate

general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

5. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(j) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) **GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.** For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to

achieve a participation goal of ^{twelve} percent (12%) for Certified Minority-Owned Business Enterprises and ^{eight} percent (8%) for Certified Women-Owned Business Enterprises.

6. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to

resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

7. DAMAGES FOR NON COMPLIANCE.

Where the University 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 liquidated damages to the University. 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.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, 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 the University.

EXHIBIT B

VENDOR'S AFFIRMATION OF UNDERSTANDING AND ADHERENCE IN CONNECTION WITH STATE FINANCE LAW SECTIONS 139-j AND 139-k

IFB #13-01
Exhibit B
Vendor's Affirmation of Understanding and Adherence
Page 1 of 2

Pursuant to State Finance Law Sections 139-j and 139-k (the "Procurement Lobbying Law"), this solicitation includes and imposes certain restrictions on communications between a Governmental Entity and a prospective Offeror during the procurement process. An Offeror/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the procurement contract by SUNY Downstate Medical Center and, if applicable, by the Office of the State Comptroller ("Restricted Period") with any individuals other than designated staff, except as otherwise specified under the Procurement Lobbying Law (see State Finance Law Section 139-j(3)(a)). Designated staff, as of the date hereof, is identified below.

SUNY Downstate Medical Center personnel are required to obtain certain information when contacted during the Restricted Period, and to make a determination of the responsibility of the Offeror/Bidder pursuant to the Procurement Lobbying Law. Certain findings of non-responsibility may result in rejection for contract award and, in the event of two such findings within a four-year period, the Offer/Bidder may be debarred from consideration for governmental Procurement Contracts. Further information about these requirements can be found on the following website: <http://www.ogs.state.ny.us/purchase/AboutPSG.asp>.

All contacts and/or inquiries regarding this procurement, whether oral, written or electronic, commencing with the earliest written notice, advertisement or solicitation and ending with the final contract award and approval by SUNY Downstate Medical Center and, where applicable, the Office of the State Comptroller, shall be directed **only** to the following persons:

Maureen Crystal
Director of Contracts
Maureen.Crystal@downstate.edu
Phone: (718) 270-1976

or

Herb Goldberg
Contracts Officer
Herb.Goldberg@downstate.edu
Phone: (718) 270-3741

IFB #13-01
Exhibit B
Vendor's Affirmation of Understanding and Adherence
Page 2 of 2

The vendor must affirm its understanding of, and adherence to, this policy by completing, signing and returning this Affirmation of Understanding and Adherence. This policy provides that if a officer, employee or any other member of a governmental entity becomes aware that an Offeror/Bidder has violated the permissible contact provisions of the Procurement Lobbying Law, such person shall immediately notify the Ethics Officer, Inspector General or other official of the procuring governmental entity for investigation. **A vendor's failure to comply with this provision may result in the disqualification of that vendor from consideration for contract award hereunder.**

Vendor's Affirmation of Understanding and Adherence

I, _____ (name of individual and title at vendor company), hereby affirm and agree to comply with SUNY Downstate Medical Center's procedure relating to permissible contacts during a governmental procurement, and certify that all information provided by _____ (name of vendor company) to SUNY Downstate Medical Center is complete, true and accurate.

Signature: _____

Title: _____

Date: _____

STATE OF _____)
COUNTY OF _____) SS.:

On this ____ day of _____, 20____, before me personally came _____, to me known, who being duly sworn, did depose and say that he/she resides in _____; and that he/she is the _____ (title) of _____, the vendor described herein, and who executed the foregoing Vendor's Affirmation of Understanding and Adherence.

Notary Public

EXHIBIT C

PRICE PROPOSAL FORM

Exhibit C
IFB #13-01
Price Proposal Form – Page 1 of 9

The vendor must complete, and return with its proposal, all nine (9) pages of Exhibit C. Attach additional sheets if necessary.

Vendor Information

Company Name: _____

Street Address: _____

City/State/Zip: _____

Point of Contact: _____

Contact's Title: _____

E-mail Address: _____

Telephone Number: _____ Fax Number: _____

of years in business: _____

of years providing the services required herein: _____

Instructions: Bidders must provide proposed pricing on the grid included in this Price Proposal Form, in accordance with the instructions herein. **Pricing must be inclusive of any and all expenses including, but not limited to, any travel and lodging expenses.**

To determine a bidder's ranking, the bidder's Hourly Bill Rate will be worth 97%, its Hourly Pay Rate 3%, of its bid.

Additional Services: By submitting a bid hereunder, a bidder acknowledges and agrees that it will be compensated only for those services requested herein and for which it has proposed pricing. SUNY-DMC will not be responsible for any additional costs, other than for the services outlined hereunder, and for which such Vendor has actually proposed a price in its bid.

Guarantees: By submitting a bid in response to this IFB, a Vendor warrants, represents and guarantees that the pricing offered is the same as, or lower than, that offered to any governmental or commercial account for similar products and services.

Exhibit C
IFB #13-01
Price Proposal Form – Page 2 of 9

****NOTE - The prices proposed must be all-inclusive. Vendor's compensation under the Contract will be based strictly on the rates proposed herein, unless such rates are subsequently adjusted pursuant to a Contract Amendment between the parties that is approved by the Office of the New York State Comptroller.**

Vendor's Certification that Vendor has read and understands all aspects of this IFB including, but not limited to, EXHIBIT A and EXHIBIT A-1.

Vendor: _____

Signature: _____

Print FULL Name and Title: _____

Exhibit C
IFB #13-01
Price Proposal Form – Page 3 of 9

The following pricing is proposed by (vendor name) _____ for providing SUNY-DMC with , temporary nursing services in accordance with the specifications set forth in IFB #13-01.

Important Information on Completing your Price Proposal

All quotes must be inclusive of any and all expenses. The successful bidder will be expected to pay for any travel expenses, housing expenses and any and all other costs associated with the placement of personnel at SUNY-DMC.

A bidder is not required to bid on every category set forth on the grid. For any category on which it is not bidding, it must place an “N/A” in both the “Hourly Pay Rate” and the “Hourly Bill Rate” box(es) for that category on the grid. A bidder proposing pricing for only certain categories will, if responsive and responsible, be awarded a contract for only those categories for which it proposed a price.

For each category bid upon, the bidder must provide two figures: An “Hourly Pay Rate” and an “Hourly Bill Rate”. The hourly pay rate is the rate the bidder pays to its personnel in that category. The hourly bill rate is the rate the bidder proposes to charge SUNY-DMC for personnel in that category. In each instance, a precise price must be indicated; price ranges will not be accepted, and any bid submitted with price ranges will be deemed non-responsive.

The proposed “Hourly Bill Rate” for a category will constitute 97% of the bidder’s price to determine its rank for that category. The “Hourly Pay Rate” will constitute 3% of the price.

The figure under each category of personnel on the grid indicates the number of hours of usage of that category during the period July 1, 2011 through June 30, 2012. If a particular category was not used during this period, there is a “0” in the box for that category, followed by an asterisked figure representing a rough estimate of projected annual use. These figures are presented for informational purposes only, and do not constitute a representation of or commitment to, levels of usage or minimum usage during the term, or any portion of the term, of the contracts to be awarded hereunder.

Per diem – no contract; nurse is called in for individual shifts as needed.

Local contract – nurse is under contract for a specified number of shifts for an extended, guaranteed period (minimum of 3 shifts per week for a minimum of 8 consecutive weeks).

Travel contract – nurse resides 50 miles or more from SUNY Downstate Medical Center and is under contract for a minimum number of shifts for an extended, guaranteed period and whose bill rate reflects travel expenses, housing and other ordinary costs associated with the placement of personnel (minimum of 3 shifts per week for 26 consecutive weeks).

IFB #13-01 EXHIBIT C – PRICE PROPOSAL – Page 4 of 9

	Category	Qualifications	Hourly Pay Rate	Hourly Bill Rate
1	Certified Nursing Assistant/Aide PER DIEM 71,982	Minimum of two (2) years experience in an acute care hospital. Must be able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision. Must possess excellent interpersonal and communication skills. Must pass employment physical exam and possess current New York State certification.		
2	Nurse Practitioner PER DIEM 0	Minimum of one (1) year experience in an acute area hospital. Will assist in patient care management including, but not limited to, prescribing medications, initiating and/or performing selected procedures and laboratory exams for diagnostic screening and referral purposes; and act as liaison to nursing staff. Must be able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision. Must possess excellent interpersonal and communication skills. Must have Current New York State license/registered; able to be certified or re-certified in CPR; must pass employment physical exam.		
	100*			
3	Licensed Practical Nurse PER DIEM 202	Minimum of two (2) years experience in an acute care hospital. Must be able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision. Must possess excellent interpersonal and communications skills. Must pass employment physical exam. Must have current New York State license; able to be certified or re-certified in CPR; must pass employment physical exam.		
4	Licensed Practical Nurse LOCAL CONTRACT 0	Same as #3 above.		
	10*			
5	Licensed Practical Nurse TRAVEL CONTRACT 0	Same as #3 above.		
	10*			

IFB #13-01 EXHIBIT C - PRICE PROPOSAL – Page 5 of 9

	Category	Qualifications	Hourly Pay Rate	Hourly Bill Rate
6	Registered Nurse General Medical/Surgical PER DIEM 79,125	Minimum of two (2) years experience in an acute care hospital. Must have current New York State registration. Able to be certified or re-certified in CPR. Must be able to perform a majority of patient care functions needed in the acute care setting with minimal orientation and supervision. Must possess excellent interpersonal and communications skills. Must pass employment exam.		
7	Registered Nurse General Medical/Surgical LOCAL CONTRACT 0	Same as #6 above.		
	10*			
8	Registered Nurse General Medical/Surgical TRAVEL CONTRACT 0	Same as #6 above.		
	10*			
9	Registered Nurse Operating Room PER DIEM 1,929	Minimum of two (2) years experience in an acute care hospital. Must have previous facility experience in an operating room, minimum of two (2) years out of school and one (1) year in operating room. This will mean circulating experience and scrub experience. The operating room experience must be in general and specialized. Must have current New York State registration. Able to be certified or re-certified in CPR. Must be able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision. Must possess excellent interpersonal and communications skills. Must pass employment physical exam.		
10	Registered Nurse Operating Room LOCAL CONTRACT 78	Same as #9 above.		

IFB #13-01 EXHIBIT C – PRICE PROPOSAL – Page 6 of 9

	Category	Qualifications	Hourly Pay Rate	Hourly Bill Rate
11	Registered Nurse Operating Room TRAVEL CONTRACT 3,188	Same as #9 above.		
12	Registered Nurse Critical Care PER DIEM 81,323	Minimum of two (2) years experience in an acute care hospital in a critical care area. Must have current New York State registration. Able to be certified or re-certified in CPR. Must be able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision. Must possess excellent interpersonal and communications skills. Must pass employment physical exam.		
13	Registered Nurse Critical Care LOCAL CONTRACT 6,071	Same as #12 above.		
14	Registered Nurse Critical Care TRAVEL CONTRACT 4,857	Same as #12 above.		
15	Registered Nurse Step-Down Unit PER DIEM 14,265	Minimum of two (2) years experience in an acute care hospital in a critical care area and/or step-down unit. Must have current New York State registration. Able to be certified or re-certified in CPR. Must be able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision. Must possess excellent interpersonal and communications skills. Must pass employment physical exam.		
16	Registered Nurse Step-Down Unit LOCAL CONTRACT 0	Same as #15 above.		
	15*			

IFB #13-01 EXHIBIT C – PRICE PROPOSAL – Page 7 of 9

	Category	Qualifications	Hourly Pay Rate	Hourly Bill Rate
17	Registered Nurse Step-Down Unit TRAVEL CONTRACT	Same as #15 above.		
	0			
	15*			
18	Registered Nurse Labor and Delivery PER DIEM	Same as #15 above. Additionally, minimum of one (1) year experience in Labor and Delivery, which must include C-Section experience, experience in functioning as Circulator and/or Scrub Nurse; must have NALS, BCLS and ACLS certification; must pass fetal monitoring exam administered by SUNY Downstate Medical Center.		
	18,002			
19	Registered Nurse Labor and Delivery LOCAL CONTRACT	Same as #18 above.		
	0			
	25*			
20	Registered Nurse Labor and Delivery TRAVEL CONTRACT	Same as #18 above.		
	0			
	25*.			
21	Registered Nurse Psychiatry PER DIEM	Minimum of one (1) year medical/surgical experience and one (1) year of Inpatient Psychiatric Unit experience. Must be certified, or able to be certified/re-certified, in Crisis Intervention Prevention. Must be able to perform a majority of patient care functions needed in an Inpatient Psychiatric Unit with minimal orientation and supervision. Must possess excellent interpersonal and communications skills. Must pass employment physical exam.		
	5,950			
22	Registered Nurse Psychiatry LOCAL CONTRACT	Same as #21 above.		
	0			
	1,000*			

IFB #13-01 EXHIBIT C – PRICE PROPOSAL – Page 8 of 9

	Category	Qualifications	Hourly Pay Rate	Hourly Bill Rate
23	Registered Nurse Psychiatry TRAVEL CONTRACT 0	Same as #21 above.		
	1,000*			
24	Operating Room Technician PER DIEM 1,438	Minimum of two (2) years experience in an acute setting. Previous facility experience in Operating Room. Must be able to perform majority of patient care functions with minimal orientation and supervision. Must possess excellent interpersonal and communications skills. Must pass employment physical exam.		
25	Operating Room Technician LOCAL 2,344	Same as #24 above.		
26	Operating Room Technician TRAVEL CONTRACT 0	Same as #24 above.		
	10*			
27	Hemodialysis Technician PER DIEM 5,530	Minimum of two (2) years in an acute setting. Previous facility experience in Hemodialysis Unit. Must be able to perform majority of patient care functions in the unit with minimal orientation and supervision. Must possess excellent interpersonal and communications skills. Must pass employment physical exam.		
28	EKGA PER DIEM 18,601	Minimum of two (2) years experience in an acute setting. Previous experience as a Multifunction Tech or Telemetry Tech required. Must be able to perform majority of patient care functions in the unit with minimal orientation and supervision. Must possess excellent interpersonal and communication skills. Must pass employment physical exam.		

* There was no usage of this category in the period July 1 2011 through June 30, 2012. The asterisk figure represents a rough estimate of projected annual use. It does not constitute a representation of, or commitment to, level of usage, or minimum usage, during the term, or any portion of the term of the contracts to be awarded hereunder.

Exhibit C
IFB #13-01
Price Proposal Form - Page 9 of 9

Certification

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

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other vendor or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the vendor and will not knowingly be disclosed by the vendor prior to opening, directly or indirectly, to any other vendor, Vendor or to any competitor;
3. No attempt has been made or will be made by the vendor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
4. The attached State University of New York standard contract clauses contained in Exhibit "A" and Exhibit "A-1" are made a part of this IFB and by submitting this proposal the vendor accepts the terms contained therein.

(Vendor's Name)

By _____
(Officer's Signature)

(Officer's Title)

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

**SUNY DOWNSTATE MEDICAL CENTER
HIPAA BUSINESS ASSOCIATE AGREEMENT**

RE: CONTRACT # _____

THIS AGREEMENT is made by and between **THE STATE UNIVERSITY OF NEW YORK** ("SUNY"), an educational corporation organized and existing under the laws of the State of New York and having its principal offices located at State University Plaza, Albany, New York 12246, acting for and on behalf of **SUNY DOWNSTATE MEDICAL CENTER** (also known as SUNY Health Science Center at Brooklyn), located at 450 Clarkson Ave., Brooklyn, New York 11203 ("Covered Entity") and _____, located at _____ ("Business Associate"). Covered Entity and Business Associate, collectively, may hereinafter be referred to as the "Parties," as in the parties to this Agreement.

WHEREAS, Covered Entity and Business Associate are parties to one or more agreements and/or may in the future become parties to additional agreements (collectively, the "Underlying Agreements"), pursuant to which Business Associate provides certain services to Covered Entity and, in connection with such services, creates, receives, uses or discloses for or on behalf of Covered Entity certain individually identifiable Protected Health Information relating to patients of Covered Entity ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act Title XIII of Division A of the American Recovery and Reinvestment Act, 2009 (HITECH Act) and regulations promulgated there under, as such law and regulations may be amended from time to time (collectively, "HIPAA"); and

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

NOW, THEREFORE, the parties agree that each of the Underlying Agreements shall hereby be amended as follows:

1. Definitions.

- (a) "Breach"- shall have same meaning given to such term as defined in 45 CFR § 164.402.
- (b) "Business Associate" shall have the same meaning given to such term as defined in 45 CFR § 160.103.
- (c) "Covered Entity" shall have the same meaning given to such term as defined in 45 CFR § 160.103.
- (d) "Designated Record Set" shall have the same meaning given to such term as defined in 45 CFR § 164.501.
- (e) "Disclosure" shall have the same meaning given to such terms as defined in 45 CFR §160.103.
- (f) "Electronic Protected Health Information " or "e-PHI" shall have the same meaning given to such term as defined in 45 CFR §160.103 limited to the information transmitted or maintained by the Business Associate in electronic form format or media.
- (g) "Individual" shall have the same meaning given to such term as defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (h) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E respectively.

- (i) "Protected Health Information" or "PHI" shall have the same meaning given to such term as defined in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (j) "Required By Law" shall have the same meaning given such term as defined in 45 CFR§ 164.103 and The Health Information Technology for Economic and Clinical Health Act (HITECH)Division A: Title XIII, Subtitle D.
- (k) "Security" or "Security Measures" encompass all of the administrative, physical, and technical safeguards in an information system specified in subpart C of 45, CFR § 164.
- (l) "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information as specified in subparts A and C in 45 C.F.R. Parts 160 and 164, respectively.
- (m) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

2. Obligations and Activities of Business Associate.

- (a) Except as otherwise limited in this Agreement, Business Associates may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy and Security Rules, if done by Covered Entity
- (b) Business Associate agrees to use appropriate safeguards, including without limitation, administrative, physical and technical safeguards, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to reasonably and appropriately employ the same standards as required by law to, protect the confidentiality, integrity and availability of any

electronic Protected Health Information (e-PHI) that it may receive, maintain or transmit on behalf of the Covered Entity.

- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement or any security incident of which it becomes aware, involving Protected Health Information of the Covered Entity.
- (e) Subject to United States and New York state export control and foreign outsourcing laws, rules and regulations, the Business Associate will within a reasonable time after the execution of this agreement require any of its subcontractors, agents or affiliates either based in the United States or a foreign country, to provide reasonable assurance, in writing, that the subcontractor or affiliate will comply with the same privacy and security obligations required of the Business Associate with respect to such PHI either set forth in this agreement or required by applicable law, rules and regulations.
- (f) Business Associate agrees to provide access, at the written request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity in order to meet the requirements under 45 CFR §164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the written request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- (h) Business Associate agrees to make available internal practices, books, and records

relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.

- (i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- (j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (2)(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- (k) Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that Business Associate is required to comply with the confidentiality, disclosure and re-disclosure requirements of 10 NYCRR Part 63 to the extent such requirements may be applicable.
- (l) If Business Associate, in performance of the contracted services, extends, renews or continues credit to patients or regularly allows patients to defer payment for services including setting up payment plans in connection with one or more covered accounts, as defined at 16 C.F.R. § 681.2(b)(3), the Business Associate shall comply with the Federal Trade Commission's "Red Flag" Rules, if applicable, or develop and implement a written identity theft prevention program designed to identify, detect, mitigate and respond to suspicious activities that could indicate that identity theft has occurred in the Business Associate practice or business.

3. Permitted Uses and Disclosures by Business Associate.

In case Business Associate obtains or creates Protected Health Information, Business Associate may use or disclose Protected Health Information, or any information derived from that Protected Health Information, only as explicitly permitted in the underlying agreement, and only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR § 164.504(e). It means that:

- (a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Application of Security and Privacy Provisions to Business Associate.

- (a) Security Measures: 45 CFR §164.308, 164.310, 164.312 and 164.316, dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate as Required By Law. Any

additional security requirements contained in Division A Title XIII Health Information Technology of the American Recovery and Reinvestment Act that apply to Covered Entity shall also apply to Business Associate as of February 17, 2010. Business Associates that require access to Covered Entity electronic patient systems and electronic infrastructure systems (either on site or remote) will supply the necessary information of employees to uniquely identify such employees, as employees with a need to access systems and will supply to Covered Entity Information Security Officer a valid state or federal issued photo ID for such employees to receive a unique user name and password to access the system(s).

- (b) Application of Civil and Criminal Penalties- If Business Associate violates any security provision as Required By Law specified in subparagraph (a) above, sections 1176 and 1177 of the Social Security Act 42 U.S.C. §1320d-5, 1320d-6 shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such security provision.

5. Information Breach Notification Requirements.

- (a) Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary of the Department of Health and Human Services and the Individual in case of a security breach of unsecured Protected Health Information (as defined in 45 CFR §164.402). Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured Protected Health Information, Business Associate without unreasonable delay and in no case later than thirty (30) days following the discovery of a breach of such information, shall notify Covered Entity of such breach. Such notice shall include the identification of each individual whose Unsecured Protected Health

Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the breach.

- (b) Covered Entity and Business Associate recognizes that the Unsecured Protected Health Information may contain the social security numbers, financial account information or driver's license number or non-driver identification card number ("private information" as defined in the New York State Information Security Breach and Notification Act, as amended "ISBNA" (General Business Law § 889-aa; State Technology Law § 208). Subject to the issue of interim final regulations by the Secretary and any periodic updates thereof all of which are incorporated by reference in this Agreement, in event of the breach of Unsecured Protected Health Information containing an Individual's private information, Business Associate shall in addition to notifying Covered Entity as in subparagraph (a) comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law, § 208). Business Associate shall be liable for the costs associated with such breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors

6. Term and Termination.

- (a) Term. The Term of this Agreement shall be effective as of the Effective Date (as defined below), and shall terminate at termination of underlying agreement.
- (b) Termination for Cause. The parties acknowledge that in the event the Covered Entity learns of a pattern or activity or practice of the Business Associate that constitutes violation of a material term of this Agreement, then the parties promptly shall take reasonable steps to cure the violation. If such steps are, in the judgment of the Covered Entity, unsuccessful, ineffective or not feasible, then the Covered Entity may terminate, in its sole discretion, any or all of the

Underlying Agreements upon written notice to the Business Associate, if feasible, and if not feasible, shall report the violation to the Secretary of the Department of Health and Human Services.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement or the Underlying Agreement(s) for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(d) Effective Date. The effective date of this Agreement (the "Effective Date") shall be the date of the last signature below.

7. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

(b) Agreement. The Parties agree to take such action as is necessary to amend

the Underlying Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law §104-191; provided, however, that no Agreement shall be deemed valid unless signed by both parties and approved by the New York State Attorney General and the Office of the State Comptroller, when necessary.

- (c) Survival. The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement and/or the Underlying Agreements, as shall the rights of access and inspection of Covered Entity.
- (d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Rules.

8. Governing Law; Conflict.

This Agreement shall be enforced and construed in accordance with the laws of the State of New York. Jurisdiction of any litigation with respect to this Agreement shall be in New York, with venue in a court of competent jurisdiction located in Kings County. In the event of a conflict between the terms of this Agreement and the terms of any of the Underlying Agreements, the terms of this Agreement shall control.

HIPAA BUSINESS ASSOCIATE AGREEMENT

RE: _____

CONTRACT NO. _____

SUNY DOWNSTATE MEDICAL CENTER

CONTRACTOR: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date

Date

EXHIBIT E

NEW YORK STATE FORMS

VENDOR RESPONSIBILITY QUESTIONNAIRE

**CONTRACTOR CERTIFICATION
TO COVERED AGENCY
PURSUANT TO SECTION 5-a OF THE TAX LAW
FORM ST-220-CA**

**CONTRACTOR CERTIFICATION
PURSUANT TO SECTION 5-a OF THE TAX LAW
FORM ST-220-TD**

**FORMS A, B AND C
IN CONNECTION WITH
STATE FINANCE LAW
SECTIONS 139-j AND 139-k**

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
NOT-FOR-PROFIT BUSINESS ENTITY**

BUSINESS ENTITY INFORMATION				
Legal Business Name			EIN (Enter 9 digits, without hyphen)	
Address of the Principal Place of Business/Executive Office			New York State Vendor Identification Number	
			Telephone ext.	Fax
Email		Website		
Authorized Contact for this Questionnaire				
Name:			Telephone ext.	Fax
Title			Email	
List any other DBA, Trade Name, Other Identity, or EIN used in the last five (5) years, the state or county where filed, and the status (active or inactive): (if applicable)				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS

1.0 Business Entity Type – Please check appropriate box and provide additional information:

a) <input type="checkbox"/> Corporation (including PC)	Date of Incorporation	
b) <input type="checkbox"/> Limited Liability Co. (LLC or PLLC)	Date Organized	
c) <input type="checkbox"/> Limited Liability Partnership	Date of Registration	
d) <input type="checkbox"/> Limited Partnership	Date Established	
e) <input type="checkbox"/> General Partnership	Date Established	County (if formed in NYS)
f) <input type="checkbox"/> Sole Proprietor	How many years in business?	
g) <input type="checkbox"/> Other	Date Established	

If Other, explain:

1.1 Was the Business Entity formed in New York State? Yes No

If "No," indicate jurisdiction where Business Entity was formed:

United States State _____

Other Country _____

1.2 Is the Business Entity currently registered to do business in New York State with the Department of State? Yes No

Note: Select 'not required' if the Business Entity is a General Partnership. Not required

If "No," explain why the Business Entity is not required to be registered in New York State.

1.3 Is the Business Entity registered as a Sales Tax vendor with the New York State Department of Tax and Finance? Yes No

Explain and provide detail, such as 'not required,' 'application in process,' or other reasons for not being registered.

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
NOT-FOR-PROFIT BUSINESS ENTITY**

I. BUSINESS CHARACTERISTICS		
1.4 Is the Business Entity a Joint Venture? <i>Note: If the submitting Business Entity is a Joint Venture, also submit a separate questionnaire for the Business Entity comprising the Joint Venture.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.5 Does the Business Entity have an active Charities Registration Number?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Enter Number: _____ If exempt, explain: _____ If an application is pending, enter date of application: _____ Attach a copy of the application		
1.6 Does the Business Entity have a DUNS Number?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Enter DUNS Number _____		
1.7 Is the Business Entity's principal place of business/Executive Office in New York State? If "No," does the Business Entity maintain an office in New York State?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	
Provide the address and telephone number for one New York Office.		
1.8 Is the Business Entity's principal place of business/executive office:		
<input type="checkbox"/> Owned <input type="checkbox"/> Rented Landlord Name (if 'rented') _____ <input type="checkbox"/> Other Provide explanation (if 'other') _____		
Is space shared with another Business Entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Name of other Business Entity _____		
Address _____		
City _____	State _____	Zip Code _____ Country _____
1.9 Is the Business Entity a Minority Community Based Organization (MCBO)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.10 Identify current Key Employees of the Business Entity. Attach additional pages if necessary.		
Name _____	Title _____	
Name _____	Title _____	
Name _____	Title _____	
Name _____	Title _____	
1.11 Identify current Trustees/Board Members of the Business Entity. Attach additional pages if necessary.		
Name _____	Title _____	
Name _____	Title _____	
Name _____	Title _____	
Name _____	Title _____	
II. AFFILIATES AND JOINT VENTURE RELATIONSHIPS		
2.0 Does the Business Entity have any Affiliates? Attach additional pages if necessary (If no, proceed to Section III)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Affiliate Name _____	Affiliate EIN (If available) _____	Affiliate's Primary Business Activity _____
Explain relationship with the Affiliate and indicate percent ownership, if applicable (enter N/A, if not applicable):		
Are there any Business Entity Officials or Principal Owners that the Business Entity has in common with this Affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name _____	Position/Title with Affiliate _____	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
NOT-FOR-PROFIT BUSINESS ENTITY**

III. CONTRACT HISTORY

3.0 Has the Business Entity held any contracts with New York State government entities in the last three (3) years? If "Yes," attach a list including the Contract Number, Agency Name, Contract Amount, Contract Start Date, Contract End Date, and the Contract Description.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

IV. INTEGRITY – CONTRACT BIDDING*Within the past five (5) years, has the Business Entity or any Affiliate*

4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

4.2 Been denied a contract or had a bid rejected based upon a finding of non-responsibility by a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

4.3 Agreed to a voluntary exclusion from bidding/contracting with a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

4.4 Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

For each "Yes" answer, provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

V. INTEGRITY – CONTRACT AWARD*Within the past five (5) years, has the Business Entity or any Affiliate*

5.0 Been suspended, cancelled or terminated for cause on any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

5.2 Entered into a formal monitoring agreement as a condition of a contract award from a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

For each "Yes" answer, provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

VI. CERTIFICATIONS/LICENSES

6.0 Within the past five (5) years, has the Business Entity or any Affiliate had a revocation, suspension or disbarment of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

VII. LEGAL PROCEEDINGS*Within the past five (5) years, has the Business Entity or any Affiliate*

7.0 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

7.1 Been the subject of an indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

7.3 Had any New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
NOT-FOR-PROFIT BUSINESS ENTITY**

VII. LEGAL PROCEEDINGS	
<i>Within the past five (5) years, has the Business Entity or any Affiliate</i>	
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Other than the previously disclosed: (i) Been subject to the imposition of a fine or penalty in excess of \$1,000, imposed by any government entity as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination; or (ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer, provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

VIII. LEADERSHIP INTEGRITY	
<i>Note: If the Business Entity is a Joint Venture, answer 'N/A- Not Applicable' to questions 8.0 through 8.4.</i>	
<i>Within the past five (5) years, has any individual previously identified, any other Key Employees not previously identified or any individual having the authority to sign execute or approve bids, proposals, contracts or supporting documentation with New York State been subject to</i>	
8.0 A sanction imposed relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 An investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 An indictment, grant of immunity, judgment, or conviction of any business related conduct constituting a crime including, but not limited to, fraud, extortion, bribery, racketeering, price fixing, bid collusion or any crime related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 Misdemeanor or felony charge, indictment or conviction for: (i) any business-related activity including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price fixing or collusive bidding; or (ii) any crime, whether or not business related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.4 A debarment from any government contracting process?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
For each "Yes" answer, provide an explanation of the issue(s), the individual involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
NOT-FOR-PROFIT BUSINESS ENTITY

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY	
9.0 Within the past five (5) years, has the Business Entity or any Affiliates received any formal unsatisfactory performance assessment(s) from any government entity on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.1 Within the past five (5) years, has the Business Entity or any Affiliates had any liquidated damages assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.2 Within the past five (5) years, has the Business Entity or any Affiliates had any liens, claims or judgments over \$15,000 filed against the Business Entity which remain undischarged or were unsatisfied for more than 120 days?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the lien holder or claimant's name(s), the amount of the lien(s), claim(s), or judgments(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.3 Within the last seven (7) years, has the Business Entity or any Affiliate initiated or been the subject of any bankruptcy proceedings, whether or not closed, regardless of the date of filing, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the Business Entity involved, the relationship to the submitting Business Entity, the Bankruptcy Chapter Number, the Court name, the Docket Number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.	
9.4 During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any tax returns required by federal, state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the Business Entity involved, the relationship to the submitting Business Entity, the taxing jurisdiction (federal, state or other), the type of tax, the liability year(s), the Tax Liability amount the Business Entity failed to file/pay, and the current status of the Tax Liability. Provide answer below or attach additional sheets with numbered responses.	
9.5 During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the Business Entity involved, the relationship to the submitting Business Entity, the year(s) the Business Entity failed to file/pay the insurance, explain the situation, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.6 During the past three (3) years, has the Business Entity or any Affiliates had any government audits? If "Yes," did any audit reveal material weaknesses in the Business Entity's system of internal controls If "Yes," did any audit reveal non-compliance with contractual agreements or any material disallowance (if not previously disclosed in 9.6)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer, provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
NOT-FOR-PROFIT BUSINESS ENTITY

X. FREEDOM OF INFORMATION LAW (FOIL)	
10.0 Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Indicate the question number(s) and explain the basis for your claim.	

NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
NOT-FOR-PROFIT BUSINESS ENTITY

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State contracting entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Officer _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20____;

_____ Notary Public



Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help? on back*).

Contractor name				For covered agency use only	
Contractor's principal place of business				Contract number or description	
City		State		ZIP code	
Contractor's mailing address (if different than above)					
Contractor's federal employer identification number (EIN)				Contractor's sales tax ID number (if different from contractor's EIN)	
Estimated contract value over the full term of contract (but not including renewals)					
\$					
Contractor's telephone number		Covered agency name			
Covered agency address					Covered agency telephone number

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

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 our 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 our information center at 1 800 698-2931.

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).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

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

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

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Hariman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?



Internet access: www.nystax.gov (for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.



Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-TD

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)				
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ()
Covered agency name	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address			Covered agency telephone number	

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.

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 www.nystax.gov. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

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**

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Make only one entry in each section below.

Section 1 — Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 — Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 — Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
__ he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

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

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

Notary Public

Registration No. _____

FORM A

Summary: Policy and Procedure of the State University of New York Relating to State Finance Law §§139-j and 139-k

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the vendor should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a vendor or a person acting on behalf of the vendor has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at www.suny.info/policies.

FORM B

Affirmation with respect to State Finance Law §§139-j and 139-k

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at www.suny.info/policies.

Procurement Description/ID No.:

Offeror **AFFIRMS** that it has reviewed and understands the Policy and Procedure of the State University of New York, relating to State Finance Law §§139-j and 139-k, and agrees to comply with State University's procedure relating to Contacts with respect to this procurement.

Name of Offeror:

Address:

Person Submitting Form:

Signature: _____

Name: _____

Title: _____

Disclosure and Certification with respect to State Finance Law §§139-j and 139-k

Procurement Description/ID No.:

1. Has a Governmental Entity, as defined in State Finance Law §139-j(1)(a), made a determination of non-responsibility with respect to the Offeror within the previous four years where such finding was due to a violation of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of no responsibility?

No ___
Yes ___

If yes, provide the following details:
Governmental Entity which made the finding:
Date of finding:
Basis of finding:

2. Has a Governmental Entity terminated or withheld a procurement contract with the Offeror because of violations of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No ___
Yes ___

If yes, identify the following:
Governmental Entity which terminated the contract:
Date of contract termination or withholding:
Identify the related procurement contract:

SUNY Downstate Medical Center reserves the right to terminate this contract in the event it is found that the certification filed by the Offeror in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the Governmental Entity may exercise its termination right by providing written notification to the Offeror in accordance with the written notification terms of this contract.

Offeror **CERTIFIES** that all information provided by Offeror with respect to its compliance with State Finance Law §§139-j and 139-k is complete, true and accurate.

Name of Offeror:

Address:

Signature of Person Submitting Form: _____

Name:

Title:

Date:

**Model Form for Governmental Entity Report of Contact
under State Finance Law §139-k(4)**

Background:

New York State Finance Law §139-k(4) obligates every Governmental Entity during the Restricted Period of a Procurement Contract to make a written record of any Contacts made. The term “Contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the Governmental Procurement. In addition to obtaining the required identifying information, the Governmental Entity must inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the Governmental Entity.

It should be noted that State Finance Law §139-k(6) provides:

[a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a “contact” within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

Instructions:

This model form is for use by the Governmental Entity and may be used for each Procurement Contract governed by State Finance Law §139-k. All recorded Contacts shall be included in the procurement record for the Procurement Contract. This model form was designed to collect information about initial and subsequent Contacts on the specified procurement contract during the Restricted Period. However, a separate form must be completed for **each** person or organization that Contacts the Governmental Entity about each Procurement Contract. Additional information and guidance on the “restricted period” and permissible Contacts can be found in the guidelines issued by the Advisory Council on Procurement Lobbying, which can be found on the OGS website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

It is recommended that Governmental Entities advise Offerers and those designated, employed or retained by Offerers of the intention to record the Contact. It is also recommended that information be provided regarding to Offerers and others about the statutory Restricted Period, Designated Contacts and the Permitted Contacts.

While the model form includes a section where the nature of the Contact may be recorded, such information is not statutorily required to be reported. Where such information is recorded, the Governmental Entity may in its discretion conform its collection with its other procurement practices.

EXHIBIT F

REFERENCE FORM

EXHIBIT F

IFB #13-01

**PROVISION OF TEMPORARY NURSING SERVICES
AND MEDICAL TECHNICIAN SERVICES**

REFERENCE FORM*

*At least three (3) references are required. Please use a separate Reference Form for each reference you provide.

Bidder Firm/Name: _____

CUSTOMER FOR WHICH SERVICES WERE PERFORMED:
CUSTOMER ADDRESS:
SCOPE OF SERVICES PERFORMED FOR CUSTOMER (Please attach additional sheets if necessary):
Reference
CONTACT NAME AND TITLE:
CONTACT INFORMATION (TELEPHONE NUMBER, EMAIL ADDRESS):

EXHIBIT G

DEFICIT REDUCTION ACT APPENDIX

SUNY Downstate Medical Center: Compliance with Deficit Reduction Act of 2005

SUNY Downstate Medical Center Health Science Center at Brooklyn (DMC) is committed to conducting business in compliance with all applicable laws. To this end, we have an extensive Compliance Program in place to be followed by all employees and certain persons or entities with which we have contractual agreements.

As a participant in the Medicaid Program, we are obligated to comply with the terms and requirements of the Deficit Reduction Act of 2005 (DRA). In accordance with the DRA, we have adopted written policies for all employees that provide detailed information about the Federal & New York False Claims Acts, the Program Fraud Civil Remedies Act, other relevant state laws, the whistleblower protections under such laws and DMC's policies for detecting and preventing waste, fraud and abuse.

The DRA also requires that we provide this information to all contractors and agents for your adoption. Accordingly, we are providing you with this exhibit which contains information regarding the applicable laws, as well as our Compliance Program which sets forth, in detail, our compliance policies and procedures for detecting and preventing fraud, waste and abuse. In addition, DMC has a Code of Ethics & Business Conduct that outlines the expected legal and ethical conduct of its personnel.

Please note that the Compliance Program and related materials are living documents that are subject to change as new regulations become effective and as policies & procedures are revised. In order to ensure that you are utilizing the most up-to-date version, you may always access our Compliance materials on our website at www.downstate.edu/compliance.

DMC has established a 24/7 Compliance Line as a mechanism for reporting activities, confidentially and anonymously, that may involve ethical violations or criminal conduct:

DMC COMPLIANCE LINE:
877-349-SUNY (telephone report)
OR

"COMPLIANCE LINE" link on the bottom of DMC's web-page:
www.downstate.edu (web report)

DMC has a no tolerance policy for employees, agents, or vendors who are involved in any unlawful activity. To that end, we expect that you share our goals of eradicating fraud and abuse and, therefore, will comply with your obligations under the DRA.

The following is a summary of the Federal & New York False Claims Acts, the Program Fraud Civil Remedies Act and other relevant State laws as posted on the Office of Medicaid Inspector General's Provider Compliance website:
http://www.omig.state.ny.us/data/imagestories/relevant_fca_statutes_122209.pdf

I. FEDERAL LAWS

1) Federal False Claims Act (31 USC §§3729-3733)

The False Claims Act ("FCA") provides, in pertinent part, as follows:

§ 3729. False claims

(a) Liability for certain acts. —

(1) In general.—Subject to paragraph (2), any person who—

- (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
- (D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the

Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

- (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note; Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.—If the court finds that—

- (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
 - (B) such person fully cooperated with any Government investigation of such violations; and
 - (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.
- (3) Costs of civil actions.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.—For purposes of this section—

(1) the terms "knowing" and "knowingly" —

(A) mean that a person, with respect to the information—

- (i) has actual knowledge of the information;
- (ii) acts in deliberate ignorance of the truth or falsity of the information; or
- (iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term "claim" —

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

- (i) is presented to an officer, employee, or agent of the United States; or
- (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—

- (I) provides or has provided any portion of the money or property requested or demanded; or
- (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual,

grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

While the False Claims Act imposes liability only when the claimant acts "knowingly," it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds, that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called "reverse false claim" may include a hospital which obtains interim payments from Medicare or Medicaid throughout the year, and then knowingly files a false cost report at the end of the year in

order to avoid making a refund to the Medicare or Medicaid program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as "qui tam relators," may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall not be less than 25 percent and not more than 30 percent.

3. Administrative Remedies for False Claims (31 USC Chapter 38: §§ 3801 - 3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted rather than when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

II. NEW YORK STATE LAWS

New York State False Claim Laws fall under the jurisdiction of both New York's civil and administrative laws, as well as its criminal laws. Some apply to recipient false claims and some apply to provider false claims. The majority of these statutes are specific to healthcare or Medicaid. Yet, some of the "common law" crimes apply to areas of interaction with the government and so, are

applicable to health care fraud and will be listed in this section.

A. CIVIL AND ADMINISTRATIVE LAWS

1) New York False Claims Act (State Finance Law §§187-194)

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

2) Social Services Law, Section 145-b - False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Service program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The state or local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five

years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

3) Social Services Law, Section 145-c - Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

B. CRIMINAL LAWS

1) Social Services Law, Section 145 - Penalties

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

2) Social Services Law, Section 366-b - Penalties for Fraudulent Practices

- a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a class A misdemeanor.
- b. Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a class A misdemeanor.

3) Penal Law Article 155 - Larceny

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This statute has been applied to Medicaid fraud cases.

- a. Fourth degree grand larceny involves property valued over \$1,000. It is a class E felony.
- b. Third degree grand larceny involves property valued over \$3,000. It is a class D felony.
- c. Second degree grand larceny involves property valued over \$50,000. It is a class C felony.
- d. First degree grand larceny involves property valued over \$1 million. It is a class B felony.

4) Penal Law Article 175 - False Written Statements

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

- a. §175.05 - Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.
- b. §175.10 - Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.
- c. §175.30 - Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.
- d. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

5) Penal Law Article 176 - Insurance Fraud

This law applies to claims for insurance payments, including

Medicaid or other health insurance, and contains six crimes

- a. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.
- b. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a class E felony.
- c. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a class D felony.
- d. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a class C felony.
- e. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a class B felony.
- f. Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

**6) Penal Law Article 177 –
Health Care Fraud**

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute.

This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes.

- a. Health care fraud in the 5th degree – A person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.
- b. Health care fraud in the 4th degree – A person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.
- c. Health care fraud in the 3rd degree – A person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.

- d. Health care fraud in the 2nd degree – A person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony.
- e. Health care fraud in the 1st degree – A person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

**III. WHISTLEBLOWER
PROTECTION**

**1) Federal False Claims Act (31
U.S.C. §3730(h))**

The Federal False Claims Act provides protection to *qui tam* relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**2) New York State False Claims
Act (State Finance Law §191)**

The New York State False Claims Act also provides protection to *qui tam* relators (individuals who commence in a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**3) New York State Labor Law,
Section 740**

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of the law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

**4) New York State Labor Law,
Section 741**

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health care provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.