

REVISION #3
RFP S-1069
TEMPORARY CLERICAL, ADMINISTRATIVE AND
OTHER SUPPORT PERSONNEL SERVICES

REVISIONS:

- 1) Implementation of new agreement date change. New start date will be April 1, 2015. Timeline change.

Please note that there were no changes to Appendices, Attachments or Exhibits and they have not been included in this revision copy. The last version of each that you received with Revision #2 should be used for your proposal.

Please sign here to acknowledge receipt of this Revision/Addendum: _____

PLEASE SUBMIT THIS SIGNED PAGE WITH YOUR PROPOSAL.



UPSTATE
UNIVERSITY HOSPITAL

Contracts Office

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REQUEST FOR PROPOSAL (RFP)

Temporary Clerical, Administrative, and other Support Personnel Services

RFP #S-1069

ANTICIPATED RFP TIME TABLE

August 12, 2014	Release RFP
August 27, 2014	Submit questions in writing
September 9, 2014	Submit RFP Bid Response
September-October	Evaluations
Mid/Late October	Preliminary award notification/contract phase
MWBE utilization plans reviewed/approved	November
October-November December	Contract to Albany for approval by Attorney General and Office of the State Comptroller
January 1, 2015 April 1, 2015	Implement final approved agreement

REQUEST FOR PROPOSAL

Bid No.: S-1069

Desired Services: Temporary Clerical, Administrative, and other Support Personnel Services

Proposal Due Date: Tuesday, September 9, 2014
3:00 PM

- Refer to Section VI of this Request for Proposal for General Instructions on Submission of Proposals:
- If your company is either unable or unwilling to submit a bid proposal, complete the enclosed Decline to Participate Form, Appendix J in its entirety and return to the address listed on the Form.
- Be sure to have the Acknowledgement Form completed by a Notary Public.
- Complete all information requested below.

Legal Business Name of Company Bidding	D/B/A – Doing Business As (if applicable):
Street Address	City/State & Zip Code
Signature	Federal ID No.
Name of Signatory (Printed or Typed)	NYS Vendor Information Number (if known)
Title of Signatory (Printed or Typed)	Phone
E-mail Address	Fax

The bid must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this REQUEST FOR PROPOSAL, Exhibit A (Standard Clauses For New York State Contracts), State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at: Procurement Lobbying: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

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- Exhibit A: SUNY Standard Contract Clauses
- Exhibit A-1: SUNY Affirmative Action Clauses
- Exhibit B: Job Titles/Qualifications/Description
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- Exhibit C: Policy ESH H-02- "Health Clearance Non-Employees"
- Exhibit U: Memorandum – Responsibility Provisions in State Contract
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Appendices

- Appendix A: State University of New York Public Officers Law
- Appendix B: Vendor Responsibility Questionnaire Requirement
- Appendix C: New York State Finance Law 139 Form
- Appendix D: New York State Department of Taxation and Finance Form ST-220-CA, and
New York State Department of Taxation and Finance Form ST-220-TD
- Appendix E: Non-Collusion Form
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Attachments

- Attachment A: M/WBE Packet/Vendor Notice
- Attachment 1: Temporary Agency Candidate Profile
- Attachment 2: The Upstate Pledge
- Attachment 3: Temporary Agency Employee Separation Form

Other Documents

- Acknowledgement Form
- Bidder Questionnaire
- Vendor Checklist
- PREVAILING WAGE SCHEDULE FOR CLEANERS
- MWBE Contractor Listing

I. **INTRODUCTION AND BACKGROUND**

The State University of New York ("SUNY") Upstate Medical University ("Upstate"), located in Syracuse, New York, includes: (i) the College of Medicine, (ii) the College of Health Professions, (iii) the College of Graduate Studies, (iv) Upstate Golisano Children's Hospital; (v) Upstate University Hospital Downtown Campus, the region's only tertiary care teaching hospital and (vi) Upstate University Hospital Community Campus .

II. **SCOPE OF SERVICES**

Upstate is requesting proposals from qualified contractors ("Bidder" or "Contractor") to provide temporary clerical, administrative and other support personnel ("Temporary Employee(s)") with intent of awarding two contracts as a result of this RFP ("Resulting Agreement") to the Bidders providing the best value (as defined in Section VII) to Upstate. A listing of the job titles to be used along with their minimum qualifications and descriptions can be found on the attached **Exhibit B**.

Contract volume:

Upstate's current experience in annual expenditures for temporary clerical, administrative and other support personnel services is approximately \$2.5 million. Upstate makes no guarantees regarding the volume of business that any Bidder may receive from the Resulting Agreement(s). The individual value of each new Resulting Agreement is indeterminate and will depend upon the tier of award and actual demand of Upstate.

Contract Award and Utilization:

Upstate is aware that no one Contractor is likely able to provide a particular candidate that Upstate might request each time one is needed, and therefore will award two (2) contracts for these services. Upstate will award contracts for temporary services to Contractors that offer the "best value" to Upstate. "Best value" for purposes of this RFP is defined as the highest rated (receiving the most total evaluation points) responsible and responsive Bidders. The Contractor that receives the highest number of points will be awarded a contract and will be considered as the "Primary" Contractor (the Primary). The Contractor that receives the second highest number of points will be awarded a contract and will be considered as the "Secondary" Contractor (the Secondary).

The Primary will be contacted first when there is a need for temporary personnel to see if they have a candidate to fit Upstate's need. Utilization of such contracts awarded will be based on: a) Upstate's need for temporary personnel; b) highest rated Contractor's ability to provide qualified candidate(s) in a timely fashion when requested by Upstate (See Section IV. Letter A, #1); and c) the performance of candidates in the job interview process. The Secondary will be contacted if: a) the Primary does not respond within the timeframe that is outlined in this RFP; b) if the Primary does not have a candidate for which Upstate is seeking; or c) the Primary's candidate did not meet all qualifications or was not chosen after interview process. The Secondary will also need to respond within the allotted timeframe as stated in RFP.

III. **MINIMUM QUALIFICATIONS, REQUIRED SUBMISSIONS**

To be deemed "responsive" to this RFP, Bidder must meet all bidder qualifications and must address its ability and methodology for providing Hospital with the desired services by addressing all points and questions that appear in this RFP, and should do so in order that they appear. Responses should be labeled to coincide with the numbers/letters of the sections and subsections as they appear in this document. Bidder shall provide a summary of its plan for providing the desired services. For those sections which require response via a pre-printed form or report, Bidders should indicate "See Attachment" as the response, and provide the information attached to the end of the proposal, clearly labeled and in sequential order to match the RFP. A detailed index of the content of the proposal is required.

Bidders must submit all requested information and documentation requested in this RFP and must include with their responses written evidence of compliance of items listed in Section III. and IV. of this RFP in order for their proposal to be considered. Failure to do so may make your proposal non-responsive. A proposal checklist has been added to the end of this RFP for Bidder's reference.

Prospective bidders are advised that Upstate's intent in having the requirements listed below is to ensure that only qualified and reliable contractors perform the work of any Resulting Agreement. Any prospective bidder failing to submit in whole or in part the below information attesting to its qualifications may result in a rejection of bidder's bid. Upstate retains the right to request any additional information pertaining to the bidder's ability, qualifications, and procedures used to accomplish all work under any Resulting Agreement, as it deems necessary to ensure safe and satisfactory work.

A. Bidder Qualifications

Bidder must meet all qualifications in order for its proposal to be considered. Bidder shall submit with its bid satisfactory evidence that it has had previous experience, adequate financial resources, and organization to perform the type, magnitude, and quality of work specified in this RFP.

1. Bidder must provide evidence that it has maintained an organization capable of performing the work hereinafter described, in continuous operation for at least the past three (3) years.
2. Bidder must prove it is financially stable by submitting copies of financial statements (Balance Sheet, Statement of Income and Retained Earnings, Statement of Cash Flow and footnotes) for the last two (2) years, which have been prepared in accordance to generally accepted accounting principles (GAAP). Financial statements will need to be reviewed, analyzed, and must be approved by the Hospital's Finance Department. The State reserves the right to request additional documentation from Bidder and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this RFP.

If your firm is considered to be "privately held" that does not exclude your firm from providing these documents. Financial statements will be kept confidential to the extent they need review, analysis and approval by Hospital's Finance Department.

B. Proposal Requirements

1. Capacity

- a. Bidder must demonstrate the ability to provide Upstate the number of personnel to staff existing temporary positions. Bidder shall provide number of annual hours it has billed in the past twelve (12) months for each job title (or similar title) listed on the attached **Exhibit B-1** – Price Sheet. The positions listed in **Exhibit B-1** are those estimated categories of personnel that may be needed at Upstate. Minimum qualifications and job descriptions for each title are listed on **Exhibit B**. The successful Bidders shall be prepared to staff up to approximately one hundred fifty (150) full-time equivalents on an annual basis at Upstate. A qualified placement and/or replacement must be available within three (3) business days of notice to Contractor.
- b. Bidder must describe their strategy to fill large volume positions, especially part-time Cleaners and Hospital Patient Services Clerks.

- c. Bidder must state the average time frame between an offer of assignment and starting in a position for staff that required a pre-appointment physical, drug screening and criminal background investigation.
- d. Bidder must provide current absenteeism rate for Temporary Employees.
- e. Bidders must indicate the average number of individuals placed per week by office referenced below in 2a.
- f. Bidder must describe all fringe benefits provided to Temporary Employees.

2. Management Depth and Experience

- a. Bidders must provide the location of their nearest office in relation to Upstate. Bidders must provide details on the experience and credentials of the staff within that office.
- b. Bidders must provide information on the credentials, qualifications and experience of its principal officers and local office management staff.

3. Training/Screening & Recruitment

- a. Bidders must indicate how Temporary Employees that are assigned to Upstate will be evaluated, screened and recruited by their agency.
- b. Bidders must indicate what training their agency provides prior to sending a Temporary Employee to Upstate:
 - i. List resources, methodology and testing provided by your training staff. Provide the number of training staff you have available and their qualifications. Describe procedures/program for training.
 - ii. Bidder will provide pre-job training, other than clerical skills for Temporary Employee(s) prior to assignment at Upstate. This training shall include but not be limited to the following:
 - (a) Introduction to safety measures and procedures.
 - (b) Personal appearance, grooming and courtesy.
 - (c) Legal rights and responsibilities.
 - (d) Other requirements as indicated by Upstate to Contractor.

4. Quality Control

- a. Employee's working at Upstate are expected to maintain the highest level of professional behavior, ethics, integrity, and honesty, regardless of position or status. Bidders must describe how their company will screen, select and submit candidates that share in Upstate's Mission, Vision and Values- <http://www.upstate.edu/president/mission.php>
- b. Bidder must describe their process of ensuring the information provided by an applicant is accurate (i.e. application, resume, etc.).
- c. Bidder must describe in detail their escalation and resolution policy in case an issue or emergency arises.

- d. Bidder must describe their disciplinary and counseling policies/procedures for problem employees.
- e. If a Temporary Employee is terminated or leaves the position and a replacement is requested immediately, Bidder must describe how they would handle the request.

5. Client References

- a. Bidders must submit a minimum of ten references using the attached **Appendix L – Vendor Reference Form**. References shall demonstrate the ability of Bidder to perform jobs similar in scope to the size, nature and complexity of the outlined RFP. One Upstate evaluator will contact five (5) of the ten (10) references to see if Bidder provided acceptable temporary employees upon requests and to see if clients were satisfied with Bidder's services. The evaluator will start at the top of the list that is provided by Bidders. If one client is unavailable, the evaluator will go to the next client on the list. For a client to be considered unavailable, the client would not have responded to the evaluator within three (3) business days. In the event that a Bidder has a prior contractual relationship with Upstate for the services described herein, such prior relationship shall be included by Upstate as one of the client references to be evaluated, regardless of whether the Bidder listed Upstate as a reference in its proposal.

If the evaluator is unable to obtain five (5) references, information obtained from references that responded will be used to determine a score and then two points will be deducted from that score for each reference that was not obtained. If the evaluator can not obtain at least one reference from the clients listed, Bidder will receive a zero when being evaluated for this criterion.

Bidders are responsible to ensure that all contact information for references are current and accurate. Further, it is the Bidder's responsibility to ensure that all identified references are willing and able to participate in the references process including providing the necessary information to inquiries. Failure to provide accurate reference information as requested or references that can provide the necessary information will negatively impact scoring.

- b. If applicable, Bidders must provide a list of clients no longer served and indicate reasons for termination of services. The list should include a client contact person, mailing address, phone number, and if available, fax number and e-mail addresses.

C. **Bid prices**

List your bid prices in the attached **Exhibit B-1**. **All Bidders intending to bid must request the Excel format of Exhibit B-1 in order to submit their proposal.** Any proposals submitted with cost information in a format other than Exhibit B-1 will be rejected as non-responsive. See **Exhibit B-1** for instructions on completing the price sheet and the markup breakdown sheet. The pay rate is proprietary information and will only be used for evaluation of the Bids submitted and computation of bill rate and overtime payments. **You must be able to bid on all titles listed. Any proposal that does not have a pay rate next to all titles will be rejected.** Do not add titles to Exhibit B-1. **All pages of Exhibit B-1 must be included in proposal package and five (5) copies must be submitted in a separate sealed envelope marked "Exhibit B-1 – Price Sheet RFP S-1069".** The signed cover page to Exhibit B-1 must be included in the envelope.

PREVAILING WAGE shall apply to job title "Cleaner". See attached Prevailing Wage Schedule-PRC#2014900797, which is the prevailing wage schedule in effect at the time of the release of this RFP. It is the Contractor's responsibility to ensure compliance with the current prevailing wage

rates paid at the time work is performed under the Resulting Agreement and shall pay Temporary Employee Cleaner at minimum the prevailing wage rate listed.

Please make note of new requirement regarding building service rates (Article 9). Rates will be determined annually on July 1. They are in effect through June 30 of the following year. Contractor must pay the newly determined rates each year.

IV. **STAFFING REQUIREMENTS**

A. **Placement of Temporary Personnel:**

1. Upstate will notify Contractor via e-mail when a temporary placement opportunity is available. Contractor will have three (3) business days to respond after they are notified of a need. Official notifications for placements through this contract are handled by the Human Resources Office. Contractor should not work directly with departments/managers required to use this contract for the placement of temporary staff, unless instructed to do so by the Human Resources Office.
2. Contractor will submit candidates for consideration using the Temporary Agency Candidate Profile (**Attachment #1**). A resume may be included in the submission, however, will not replace the Temporary Agency Candidate Profile form.
3. Unsolicited candidates/resumes will not be considered.
4. Candidate(s) presented by the Contractor will be forwarded to the hiring department for interview as long as they meet the qualifications requested. Final candidate will be selected based on candidates responses to interview questions, qualifications and experience related to the position available.
5. Within the period covered by the contract, Upstate may require Contractors to review placements and submit candidates through an on-line system. Appropriate advance notice of the requirement to use this system will be provided to Contractors.

- ##### B. **Conduct and Removal of Temporary Personnel:** All Bidder employees assigned to Upstate must be cognizant of, and comply with, the required and applicable laws, rules and regulations, including safety requirements, pertaining to the contracted services they are performing. Without limiting responsibility of Contractor for the proper conduct of their employees and the protection of Upstate property, the conduct of employees will be guided by a set of standards and rules as agreed upon between Upstate and Contractor and by such special other written instructions applicable to the services as may be asked by Upstate from time to time through its designated agents. In order to promote and support the mission and values of SUNY Upstate Medical University, all members of the Upstate community are expected to maintain the highest level of professional behavior, ethics, integrity, and honesty, regardless of position or status. The Upstate Pledge: Code of Conduct and Mutual Respect ("Upstate Pledge") **Attachment #2** provides specific expectations that govern professional and personal behavior in all interactions, including, but not limited to, interactions with patients, their families, other health professionals, employees, students, volunteers, vendors, government agencies, and the public. All Bidder employees assigned to Upstate will be expected to follow the Upstate Pledge. Contractor will agree that temporary services covered by the contract shall be performed by qualified employees in the strictest conformity with such standards as may be prescribed by Upstate. Upstate reserves the right to immediately terminate any Contractor employee assigned to Upstate under this agreement if they are guilty of improper conduct, are not qualified or needed to perform the work assigned to them, or fail to meet a level of satisfactory performance, as determined solely by

Upstate. Timely and reasonable notice of such termination will be made by Upstate to the employee and Contractor. There will be no liability for payment to Contractor as of the effective termination date.

When a temporary agency placement terminates assignment at Upstate, Contractor will notify Upstate as soon as possible using the Temporary Agency Separation Form. **(Attachment #3)**.

C. **Non-Solicitation of Contractor Employees:** Upstate will not take any action to directly solicit employees of Contractor to apply for employment as permanent staff of Upstate, during the first three (3) months of that employee's assignment to Upstate. However, as an agency of the State of New York, Upstate cannot discriminate by prohibiting Contractor employees from permanent employment opportunities at Upstate. **Upstate will not compensate Contractor if Contractor's employees are hired as permanent staff by Upstate at any time.**

D. **Pre-employment Screening:**

1. **Employee Drug Screening.**

(a) Prior to an individual's assignment to Upstate, Contractor shall determine whether the individual is illegally using drugs, and shall not place any candidate at Upstate who has tested positive for illegal drugs within the last twelve (12) months. At least one such test must be performed within the two weeks immediately preceding a proposed placement at Upstate. All placements must then be tested every six months, for the duration of the placement. Contractor shall provide valid proof that each placement successfully passed the drug-testing requirement. Contractor will not be compensated for time incurred for placement to obtain initial or subsequent drug testing. If possible, candidates are to be instructed to do this at a time not to interfere with a scheduled shift.

For candidates re-placed at Upstate by the same Contractor, another drug test prior to re-placement will not be required if a drug screen was performed within the past 6 months by the same Contractor.

(b) The drug test performed by the agency or contractor of such agency shall meet the following specifications:

(i) Administer drug tests to all candidates prior to placement at the University in accordance with the Federal guidelines set forth by DHHS/SAMSHA through the use of a SAMSHA certified laboratory(ies) whereby the drug testing process involves a screening test; a confirmation test; opportunity for a split sample; review by a Medical Review Officer, including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physicians prescription, for the positive result; and a documented chain of custody.

(ii) The specimen collected and tested must be one of the following: urine, hair or blood.

(iii) Drug test must test for all substances outlined in by the National Institute for Drug Abuse (NIDA) designated as illegal drugs for purposes of the Federal drug testing programs, commonly known as the "NIDA-5". These include marijuana, amphetamines, cocaine, opiates and phencyclidine (PCP).

2. Employee Background Checks.

- (a) Prior to an individual's assignment to Upstate, Contractor shall determine, by reference to the then current Department of Health and Human Services Office of the Inspector General's List, the General Services Administration System for Award Management List of Excluded Individuals/Entities, and the New York State Medicaid Disqualified Provider List, whether the Contractor or individual is excluded from participation in Medicare, Medicaid, or other federally funded health care programs, and shall not assign to Upstate any individuals that are so excluded. Prior to the assignment, Contractor shall provide Upstate with a copy of the report indicating that the Contractor and the individual are not so excluded. Failure to provide Upstate with a copy of the report indicating that the Contractor and individual is not so excluded shall result in immediate termination of this Agreement. Providing Upstate with an individual that is so excluded shall result in immediate termination of this Agreement.
- (b) Prior to an individual's assignment to Upstate, Contractor shall determine, through use of an appropriate consumer reporting agency, whether the individual has at any time been convicted of a crime under any federal or New York State law, and shall provide Upstate with a copy of the report resulting from such process. In the event that the individual has been so convicted, Upstate shall determine, in its sole discretion and in accordance with applicable law, whether the proposed assignment of the individual to Upstate is acceptable. The criminal background check performed by the agency shall meet the following specifications:
- (i) A Social Security Trace shall be performed to verify that the Social Security Number provided by the employee was issued by the Social Security Administration and is not assigned to a deceased person, and to identify any alias or maiden names associated with the individual. This trace will provide address records of the employee associated with the number, which shall then be used for the associated criminal records search.
- (ii) A search shall be performed of all counties in which the individual is known to have resided, under his or her current name as well as under any alias or maiden names assigned to the Social Security Number. Such criminal records search should extend as far back in time as the records of each particular county permit, which may vary by state and/or county and shall determine whether the individual has at any time been convicted of a crime under any federal or state law, as allowed, and in full compliance with, applicable federal and state laws:
1. Convictions (criminal violations, misdemeanor, felony)
 2. Arrests with prosecution pending.

Contractor shall exclude the following information:

1. Arrest records, which have not resulted in a conviction, unless the prosecution for such arrest is still pending.
2. Youthful offenders – according to jurisdiction definition.
3. Annulled, sealed or expunged records.

If a criminal history as described above has been found relating to an individual under consideration for placement at Upstate, Contractor shall first determine according to Contractor's own personnel policies and procedures, and NYS Corrections law if candidate is employable by Contractor standards. If so, and candidate is referred to Upstate, the Criminal History results must be shared with Upstate so that a determination can be made as to appropriate placement.

- (c) Sex Offender Registry Checks. Contractor will search the U.S. Department of Justice Dru Sjojin National Sex Offender Public Website (NSOPW) using individual name(s) as a search criteria (using all names associated with the candidate as determined by Social Security trace, or provided by Upstate). Verification of data received from this website must take place by a comparison of birth date/month/year and name of the individual. Individuals found to be on a sex offender registry check are prohibited from being placed at Upstate Medical University. Providing Upstate with an individual that is on a Sex Offender Registry Check shall result in immediate termination of this Agreement.
- (d) With respect to any individuals assigned to Upstate continuously for a year or more, Contractor shall re-perform the checks described in paragraphs (a) and (b) of this Section at least once annually, and shall provide Upstate with a copy of the resulting reports.

- E. Health Status of Employees: Contractor agrees to comply with Upstate's policy ESH H-02, "Health Clearance Non-Employees", included as Exhibit C of this document. Contractor's employees that may access areas where patients may be present are required to be vaccinated against influenza for the current influenza season prior to health clearance and at the beginning of each subsequent season. A valid statement indicating medical contraindication against vaccination may be presented to the Director of Employee/Student Health for consideration of exemption. Non-compliance with influenza vaccination for the current season may result in termination of assignment.

The entire SUNY Upstate Medical University campus is smoke free. There will be no smoking within the buildings or on the grounds owned or leased by Upstate Medical University. Contractor must communicate this policy to all individuals prior to their assignment to Upstate.

- F. Proper Contractor Identification: Employees of Contractor while on Upstate property shall carry an Upstate identification card (ID Badge) and shall be instructed to submit to same scrutiny upon request by Security or supervisory personnel of Upstate. The Human Resources Office at Upstate will arrange for issuance of an Upstate ID Badge for all persons assigned to Upstate through this contract.
- G. Parking and Other Regulations of Upstate: All Contractor employees who will be parking at Upstate are required to pay the required parking fees as established by Upstate for their particular parking assignment. It will be the responsibility of the Contractor to contact Upstate's Parking Office to make arrangements for parking passes or permits if required. Illegally parked vehicles are subject to ticketing and/or towing. Contractor's employees will operate vehicles responsibly under campus rules and regulations and will not park vehicles in unauthorized areas. Contractor's employees will abide by all the applicable rules and regulations of Upstate, and breach whereof shall make Contractor liable under such rules and regulations.
- H. Travel: All travel expenses must be pre-approved by Upstate. Personal vehicle mileage reimbursement for work-related travel only, shall be provided in accordance with New York State travel guidelines. Any travel under 35 miles or any travel that is a standard commute between home and office is excluded. New York State reimburses for mileage based on the standard mileage allowance established by the Internal Revenue Service (IRS). For current mileage information you can visit the IRS website: <http://www.irs.gov/2014-Standard-Mileage-Rates-for-Business,-Medical-and-Moving-Announced>

- I. **Orientation:** All Temporary Employees are required to complete mandatory New Employee Orientation (NEO), which may last up to two (2) days. Contractors' employees shall be required to complete NEO at the established Bill Rate. If Contractors' employees fail to complete NEO or if they complete NEO but do not subsequently report for work, Upstate shall not be obligated to pay Contractor for its employees' NEO. In these cases, Contractor shall be obligated to pay for its employees' NEO.

V. **GENERAL TERMS AND CONDITIONS**

A. **Procurement Lobbying Act/New York State Finance Law 139-j and 139-k:**

Prior to approval by Upstate and the New York State Comptroller, of the agreement for which this solicitation has been issued, Bidder shall not communicate with Upstate other than the person(s) identified in this solicitation as Designated Contact (s), or with a person who the Designated Contact(s) has advised Bidder is also a Designated Contact.

All inquiries and communications regarding this Request for Proposal shall be addressed to:

Designated Contact:
Kimberly Graziano
Senior Contract Administrator
Contracts Office, SLC #2050
SUNY Upstate Medical University
750 East Adams Street
Syracuse, NY 13210
Telephone: (315) 464-4680
Email: graziank@upstate.edu

By submitting a proposal, Bidder is acknowledging and agreeing to the terms and conditions defined by the Policy and Procedure of the State University of New York, relating to State Finance Law §§139-j and 139-k, and the prohibitions regarding Contacts. For your review, New York State Finance Law §139 can be found at the following web site:

http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

Bidder must submit with its proposal a written affirmation, using the attached New York State Finance Law 139 vendor form (**Appendix C**), 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.

Bidder must submit with its proposal using the attached New York State Finance Law 139 vendor form (**Appendix C**), written disclosure as to whether Bidder has been determined to be non-responsible within the previous four (4) years by reason of having violated State Finance Law §139-j or having intentionally provided false or incomplete information to a Governmental Entity with respect to its compliance with State Finance Law §139-j; and certification and that Bidder has provided accurate and complete information with respect to Bidder's compliance with State Finance Law §§139-j and 139-k within the previous four (4) years.

B. **Requirements and Procedures for Business Participation Opportunities For New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

New York State Law

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

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Bidder agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered contracts.

1. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, Bidder agrees with all of the terms and conditions of the attached Exhibit A including Clause 12- Equal Employment Opportunities for Minorities and Women. Contractor is required to ensure that the provisions of Exhibit A clause 12- Equal Employment Opportunities for minorities and women are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

2. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Contractor is encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on the Resulting Agreement for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at:

<http://www.nylovesmwbe.ny.gov/cf/search.cfm>

A listing of certified Contractors for this type of procurement has been included for interested Bidders.

New York State Executive Law Article 15-A, requires, among other things, that Upstate establish goals for maximum feasible participation of New York State Certified Minority and Women-owned Business Enterprises ("MWBE") and the employment of minority groups members and women in the performance of Upstate contracts.

GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION:

For all State Contracts in excess of \$25,000.00 whereby each SUNY campus 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 Upstate 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 fourteen percent (14%) for Minority-Owned Business Enterprises and six percent (6%) for certified Woman-Owned Business Enterprises. Please refer to **Attachment A**, M/WBE packet for required documentation.

Given the scope of work for this RFP participation can be found through the use of Tier I contractors and where possible, successful contractor is expected to meet their goals at Tier II level by purchasing supplies, materials or related services from MWBEs.

Goals are included because MWBE are available in each of these categories. The link to Empire State Development's certification database is listed below:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=9499>

Based upon an estimated budget, the goal percentages should be placed upon total value of Resulting Agreement, which will be approximately \$2.5M annually to establish a MWBE goal participation amount at the Tier 1 and/or Tier II level.

The \$2.5M annual spend applies whether utilization comes at Tier I or Tier II.

Tier I (Prime Services Supplier) – Submits invoices to Upstate Medical University

Tier II (Subcontractors) – Submits their invoices to the prime supplier. Also, Tier II is the process through which a prime supplier sub-contracts with an MWBE supplier for goods and services to fulfill a contract with Upstate.

Purchases can be made and reported using the direct or indirect method.

What is Direct and Indirect Spending Method?

Direct Spend are purchases from an MWBE that are used directly in a product or service provided to Upstate.

Indirect Spend are purchases from an MWBE that are not used directly in a product/service provided to Upstate (i.e. janitorial service, office supplies, accounting services, staffing services, etc.)

Contractor is expected to make a good faith effort to reach the above-stated goals and subcontract identified work to New York State Certified M/WBEs. Bidder will provide Upstate with a utilization plan (UP), which spells out what M/WBEs will be used, their role in providing services to Upstate, and the annual dollar value of each contract to show how they will meet Upstate's stated goals. Upstate must approve the UP before executing an agreement with the Contractor. If Contractor refuses to provide a UP or does not provide an acceptable UP, Upstate reserves the right to go to the next Bidder that would provide the "Best Value" to Upstate that will provide a UP or provides an acceptable UP.

- C. **Notification of Errors, Inquiries and Interpretation:** It shall be the responsibility of Bidder to bring to the attention of Upstate any technical deviations in the detailed specifications and to make recommendations for any additional requirements deemed necessary as standard and for work indicated in specifications included herein. If Upstate finds the deviations significant or a change in the requirements necessary, Upstate will then notify all Bidders in writing of the specifications change. No deviations for the technical specifications laid hereunder shall be made without approval of Upstate.
- D. **Additional Expenses:** Upstate shall not be liable for additional expenses from the Bidder. Upstate is not liable for any cost incurred by Bidder prior to contract approval.
- E. **Valid Negotiations:** No negotiation decision or actions shall be executed by any Bidder as a result of any oral discussions or agreements with any Upstate employee or consultant. Only those transactions that are in writing shall be considered valid. Likewise, Upstate shall only consider communications from Bidders that are signed and in writing.

- F. **Rejection of Bids:** Upstate reserves the right to make all decisions regarding this proposal, including, without limitation, the right to decide whether a proposal does or does not substantially comply with the requirements set forth. Upstate reserves the right to reject any and all bids.
- G. **Acceptance of Proposal Content:** The terms and conditions included in this RFP, as well as the applicable portions of the Bidder's proposal, shall become contractual obligations if a contract is awarded. **FAILURE OF BIDDER TO ACCEPT THESE OBLIGATIONS SHALL RESULT IN THE REJECTION OF BIDDER'S PROPOSAL.**
- H. **Proposals binding for 120 Days:** The proposal shall constitute an offer binding upon Bidder for one hundred twenty (120) days following the receipt of Bidder's proposal, and shall remain in effect thereafter until either contract is awarded or Bidder requests in writing to withdraw their bid.
- I. **Free and Open Competition:** Upstate encourages free and open competition. Whenever possible, terms, specifications, and conditions are designed to accomplish this objective, consistent with the necessity to satisfy Upstate's needs.
- J. **Governing Law:** This RFP, Bidder's proposal, and any Resulting 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 RFP, Bidder's proposal and Resulting Agreement there from shall be in New York with venue in a court of competent jurisdiction located in Onondaga County or any other court having competent jurisdiction in the State of New York.
- K. **Standard Clauses:** Any Resulting Agreement shall include **Exhibit A** (the Standard Clauses for all New York State Contracts) and **Exhibit A-1** (the Affirmative Action Clauses), the provisions of which shall take precedence over any provision in this RFP and the Bidder's proposal. These clauses relate to, among other things, assignment of the contract, availability of funds, non-discrimination, affirmative action, non-collusion, and worker's compensation.
- L. **HIPAA Compliance:** Contractor understands and agrees that Contractor's employees and/or agents assigned to Upstate shall, at all times, comply with the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") of 1996 and its implementing regulations, as well as applicable Upstate policies and procedures governing the confidentiality, privacy and security of patient protected health information. This Agreement shall be subject to, and hereby incorporates by reference, the SUNY Standard HIPAA Business Associate Agreement which is attached to this RFP as Exhibit Z and made an integral part hereof.
- M. **Bidder Terms: BIDDER'S STANDARD TERMS AND CONDITIONS WILL NOT BE CONSIDERED RELEVANT TO THEIR PROPOSAL OR THE RESULTING AGREEMENT AND SHOULD NOT BE INCLUDED WITH THEIR PROPOSAL.** Any additional Bidder terms and conditions which are attached or referenced with Bidder's proposal shall be deemed included for **informational purposes only**. No extraneous terms will be incorporated into a Resulting Agreement unless approved in writing by Upstate. Acceptance and/or processing of the bid shall not constitute acceptance of the extraneous terms.
- N. **Responsibility:** Upstate will not be held responsible for any services provided by the Contractor which are outside the scope of any Resulting Agreement. Upstate will not be held responsible for any additional costs other than for the services outlined herein or for any work performed which has not been properly authorized by Upstate.

- O. **Contractor Assurances:** Bidder warrants that it has carefully reviewed the needs of Upstate for services described in this RFP and its attachments, and otherwise communicated in writing by Upstate to Bidder, that it has familiarized itself with the State's specifications, and it warrants that it can provide such services described in the RFP and as represented in its proposal.

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

Bidder is required to meet all regulatory requirements, including any requirements which are necessary for Upstate to maintain its accreditation with the Centers for Medicare and Medicaid Services.

- P. **Contract Award:** Hospital reserves the right to not make any contract award under this RFP. In the event a contract is awarded, such award shall be made as specified in Section VII of this RFP.
- Q. **Contract Term:** The term of the Resulting Agreement outlined herein shall be for a period of five (5) years with an allowance for annual termination by Upstate after the initial one-year period.

R. **Rate Adjustment:**

For All Titles Except Cleaners: Pay/Bill Rates, once established by the bidding process, will not be changed during the first year of the Resulting Agreement. In subsequent contract renewal years, any increase or decrease in pay/bill rates will require written approval of Upstate and the New York State Comptroller. **Pay/Bill rate increases will not be automatic.** Pay/Bill rate increases above what is approved in the Resulting Agreement for individual candidates are not allowed. Any requests for such by a hiring department are to be referred to Upstate's Human Resources Department. On the annual anniversary date of the Resulting Agreement, there may be adjustments made to the bill/pay rate that will be limited to the lesser of 3% or the difference in the unadjusted Consumer Price Index (CPI-U) Northeast All Items for August of the present year and August of the previous year. Requests for a pay/bill rate increase or decrease must have explicit written justification and supporting documentation from Contractor and must be submitted to Upstate at least ninety (90) days prior to implementation of such increase or decrease. In no event shall more than one request for a bill/pay rate increase be considered during any single year period. Upstate reserves the right to negotiate a bill/pay rate decrease if the CPI-U as defined above is determined to be negative. **Price adjustment using CPI will involve changing the Temporary Employee Pay rate by the percent change in the CPI. The new bill rate will be calculated using the markup % submitted in Contractor's proposal.**

Any modification to pay/bill rates will require an amendment to the Resulting Agreement which shall be conditioned upon and is subject to the written approvals of Upstate, and if applicable, the written approvals of the New York State Attorney General and the New York State Office of the State Comptroller.

For Cleaners: Work being bid on for Cleaners-is subject to the prevailing wage rate provisions of the New York State Labor Law. Any federal or New York State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of bid.

For Cleaners, the prevailing wage rates will be considered straight time costs for work accomplished during regular hours between 7 a.m. and 5 p.m., Mondays through Fridays, excluding holidays so designated in the prevailing wage rates for the applicable trade. The rates paid to Contractor will be the percent (%) bid over prevailing wage (which includes supplemental benefits and any other required benefits). Any differential, overtime or holiday pay billed must be passed

through to the Temporary Employee and shall not be subject to Contractor's mark-up. Please note that a Contractor cannot increase its respective mark-ups at any time after bid opening. However, a Contractor may offer a lower mark-up at anytime.

PREVAILING WAGE RATES WILL BE DETERMINED ANNUALLY ON JULY 1. THEY ARE IN EFFECT THROUGH JUNE 30 OF THE FOLLOWING YEAR. CONTRACTORS MUST PAY THE NEWLY DETERMINED RATES EACH YEAR. ANY CORRECTIONS OR UPDATES TO THE ANNUAL DETERMINATION WILL BE POSED TO THE DOL WEBSITE ON THE FIRST DAY OF EACH MONTH. CONTRACTORS ARE RESPONSIBLE FOR CHECKING FOR UPDATES EACH MONTH AND PAYING THESE UPDATED RATES RETROACTIVE TO JULY 1ST.

CONTRACTOR MUST SUBMIT NEW PAY RATES TO UPSTATE AND BILL RATE WILL BE DETERMINED BY CONTRACTOR'S SUBMITTED MARKUP % ORIGINALLY PROPOSED. ANNUAL ADJUSTMENTS SHALL BE CONDITIONED UPON AND IS SUBJECT TO THE WRITTEN APPROVALS OF UPSTATE AND THE NEW YORK STATE ATTORNEY GENERAL AND THE NEW YORK STATE OFFICE OF THE STATE COMPTROLLER.

- S. Payment and Accounting Terms: Contractor must submit a monthly report to Upstate which shall include: the contract number, employee name, Upstate department where employee is assigned, employee title, hourly bill rate, hours worked and total paid to employee. A copy of these monthly reports shall be provided to:

Ms. Patty Brecht
Human Resources Department
SUNY Upstate Medical University
750 East Adams Street
Syracuse, NY 13210

Contractor will receive an Upstate account number for each placement, which should appear on all invoices along with the contract number and job title as it is listed in the contract in order for Upstate to identify the user department and make proper payment. Titles billed will be the titles determined by Upstate Medical University as noted in Exhibit B-1.

Payments under the Resulting Agreement shall be made to Contractor in accordance with New York State Finance Law, Article 11-A, upon receipt of a proper invoice. Please note that the State budget and/or the appropriation of budgeted funds to Upstate may be delayed in any given fiscal year due to circumstances beyond Upstate's control, which can delay payments for services. Interest for late payments is paid in accordance with New York State "Prompt Payment Legislation." Any and all invoices for amounts payable by Upstate shall be sent to:

SUNY Upstate Medical University
Director of Accounts Payable
SLC, 2nd Flr.
750 East Adams Street
Syracuse, New York 13210

Contractor shall provide complete and accurate billing invoices along with approved timesheets to Upstate in order to receive payment. Contractor's temporary personnel are required to use the electronic time and attendance system in place at Upstate to record their attendance which will be used for all invoicing. Contractor's own timesheets are not acceptable. Billing invoices submitted to Upstate must contain all information and supporting documentation required by the Resulting Agreement, Upstate, and the New

York State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice President for Administration or his/her designee, in his or her sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. Contractor shall comply with the New York State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the New York State Comptroller's website at:

www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under the Resulting Agreement if it does not comply with the New York State Comptroller's electronic payment procedures, except where Upstate's Vice President for Administration or his/her designee has expressly authorized payment by paper check as set forth herein. Please note that in conjunction with New York State's implementation of a new State wide financial system, the Office of the State Comptroller requires all contractors doing business with New York State agencies to complete a substitute W-9 form. Contractors registering for electronic payment can complete the W-9 form when they register. Contractors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

- T. **Overtime and Holiday Pay:** The basic work week (Monday-Sunday) will be forty (40) hours for all temporary service personnel. If it becomes necessary for a temporary service worker to work in excess of forty (40) hours, or to work one of the six recognized holidays, Upstate shall be billed for such service at the rate of one and one-half (1 ½) times the **PAY RATE** (not the Bill Rate) for those hours as indicated in Exhibit B-1. Upstate will not pay for work performed through a scheduled lunch hour break as determined by the standard lunch break for that department, unless a worked through lunch form is completed and signed by the supervisor. All payments for working through lunch, overtime and holidays must be pre-approved by the departmental supervisor in which the temporary service personnel are employed.
1. Any temporary employee that works five (5) or more hours in one day "**must**" deduct one-half (1/2) hour for lunch. Upstate will not pay the one-half (1/2) hour to an employee that does not take a lunch during a shift that is five (5) hours or longer. If an employee works less than five (5) hours, the employee does not need to deduct for lunch and Upstate will pay the hours worked.
 2. Any temporary employee that works overtime or on a holiday **must** submit a time slip authorized by the department supervisor. This is sufficient documentation and authorization for Upstate to make payment of these hours. No memos or other documentation will need to be submitted to allow SUNY to authorize payment of the overtime or holidays worked.
 3. Upstate recognizes only six (6) holidays that qualify for holiday pay if worked by a temporary service worker. These six (6) holidays are: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas Day.
- U. **Taxes:** Contractor will pay all salaries and expenses of its employees, as well as all Federal Social Security taxes, Federal and State unemployment taxes, and any similar taxes relating to such employment.
- V. **Non-Collusion:** Bidder certifies that the only persons or parties interested in this RFP as Principals are those named herein as Bidder/Contractor; that their proposal is made without collusion with any other person, firm or corporation, either directly or taken any action in restraint of free competitive bidding; and in submitting their proposal the Bidder has examined instructions, terms and conditions and specifications of this RFP. Bidder shall complete and return with each of their proposals the Non-Collusion Certification form that is attached as **Appendix E**. The Bidder proposes and agrees to execute and fully perform in accordance with any proposal offered to Upstate.

W. **Reserved Rights:** Upstate reserves the right to:

1. Reject any and all proposals received in response to this RFP.
2. Withdraw the RFP at any time, at Upstate's sole discretion.
3. Waive requirements or amend this RFP upon notification to all Contractors prior to the bid submission deadline.
4. RFP Requirements may be eliminated or waived after receipt of bid proposals, but only if not material in nature and unmet by all Bidders.
5. Clarify costs/cost figures with the concurrence of Bidders as necessary. Upstate may correct mathematical errors. Altering the bid prices will not be allowed.
6. Negotiate with Successful Bidder within the scope of the RFP in the best interest of Upstate.
7. Reject any or all portions of any offer to negotiate terms and conditions consistent with the solicitation, and to make an award for any or all remaining portions.
8. Request clarifications, request bid revisions, or to request any information deemed necessary for proper evaluation of bids from all Bidders deemed eligible for agreement award. Failure to provide requested information may result in rejection of the bid.
9. Waive minor irregularities when in the best interests of Upstate.
10. To disqualify a Bidder from receiving the award if Bidder, or anyone in Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
11. To begin contract negotiations with another Bidder should Upstate be unsuccessful in negotiating a contract with the selected Bidder within 45 calendar days.
12. Change the proposal's due date upon appropriate notification to all prospective Bidders.
13. Request and contact references.
14. Make award in whole or in part.

X. **Independent Contractor:** Contractor and its employees engaged in the performance of work shall at all times be deemed to be performing as an independent contractor and not as agents or employees of Upstate. Therefore, Contractor bears the full responsibility for any and all liability, loss, damages, and expenses which may be suffered from any claim, demand, suit or cause of action which may be made or held against them by reason of negligence or malpractice on the part of Contractor, its agents or employees.

Contractor, employees and agents of Contractor shall neither hold themselves out as, nor claim to be, officers or employees of Upstate and shall make no claim for, nor shall be entitled to, worker's compensation coverage, medical and unemployment benefits, social security or retirement membership benefits from Upstate.

- Y. **Insurance Requirements:** A Bidder must commit to obtaining all necessary proof of insurance with its proposal. Upon tentative award, Bidder shall be required to procure all required insurance. If awarded a contract, Contractor must provide proof of current insurance throughout the Resulting Agreement term to Upstate. Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of the Resulting Agreement, policies of insurance as herein below set forth, written by insurance companies that are an authorized insurer as defined in Section 107 of New York State Insurance Law and licensed to do insurance business in the State of New York as provided for in Section 1102 of the New York State Insurance Law. Within ten (10) days of the execution of the Resulting Agreement, and prior to commencement of any work or services, successful Bidder shall provide Upstate with a copy of said insurance certificate(s) that are written in accordance with the requirements of the paragraphs below. Acceptance and/or approval of the insurance certificate(s) does not, and shall not, be construed to relieve successful Bidder of any obligations, responsibilities or liabilities under the Resulting Agreement.

General Conditions:

A. Conditions Applicable to Insurance. All policies of insurance required by the Resulting Agreement must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B. *Insurance Requirements* below.
2. **Policy Forms.** Except otherwise specifically provided herein or agreed in writing by Upstate, policies must be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to Upstate, before commencing any work under Resulting Agreement. Certificates shall reference the Contract Number. Certificates shall be mailed to the Contracts Office at SUNY Upstate Medical University, 750 East Adams Street, SLC-#2050, Syracuse, New York 13210.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to Upstate. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply Upstate updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates shall:

- a. Be in the form approved by Upstate
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by Resulting Agreement.
- c. Specify the Additional Insured and Named Insured as required herein.
- d. Refer to the Resulting Agreement number and any other attachments on the face of the certificate.
- e. Be signed by an authorized representative of the insurance carrier or producer.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to Upstate for any claim arising from the Contractor's work under Resulting Agreement, or as a result of the Contractor's activities. Any other insurance maintained by Upstate shall be excess of and shall not contribute with Contractor's insurance regardless of the "other insurance" clause contained in Upstate's own policy of insurance.

5. **Policy Renewal/Expiration.** At least two weeks prior to the expiration of any policy required by Resulting Agreement, evidence of renewal or replacement policies of insurance with terms no less favorable to Upstate than expiring policies shall be delivered to Upstate in the manner required for service of notice in paragraph A.3 *Certificates of Insurance/Notices* above. If, at any time during the term of Resulting Agreement, the coverages provisions and limits of the policies required herein do not meet the provisions and limits set forth in Resulting Agreement or proof thereof is not provided to Upstate, Contractor shall immediately cease work. Contractor shall not resume work until authorized to do so by Upstate. Any delay, time lost, or additional cost incurred as a result of Contractor not having insurance required by Resulting Agreement or not providing proof of same in a form acceptable to Upstate, shall not give rise to a delay claim or any other claim against Upstate. Should Contractor fail to provide or maintain any insurance required by Resulting Agreement, or proof thereof is not provided, Upstate may withhold further contract payments, treat such failure as a breach or default of the Resulting Agreement.

6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. **Subcontractors.** Should Contractor engage a Subcontractor, Contractor shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to Upstate.

Acceptance and/or approval by Upstate does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under Resulting Agreement.

All insurance required by Resulting Agreement shall name The State of New York, State University of New York and Upstate as additional insured hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

B. Insurance Requirements. Contractor, throughout the term of Resulting Agreement, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of Resulting Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. The policy must include a waiver of subrogation in favor of New York State, The State University of New York and Upstate.
2. General Liability Insurance, including contractual liability with a limit of not less than \$2,000,000 each occurrence. Required coverage must be written on the ISO occurrence form ISO CG 00 01 or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including tort liability or another assumed in a contract). The policy must also include a waiver of subrogation in favor of New York State, the State University of New York and Hospital.
 - a. If such insurance contains an aggregate limit, it shall apply separately on a per job basis.

3. Umbrella/Excess Liability Insurance with a limit of not less than \$2,000,000 over and above primary limits of liability, as specified in the coverage notes in (2) above.
4. Employee Dishonesty coverage on money, securities or property other than money and securities including property in your care, custody or control with a limit not less than \$1,000,000. The coverage shall include all employees including contract and temporary, whether identified or not, acting alone or in collusion with others.
5. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

Worker's Compensation Insurance and Disability Benefits Requirements:

Worker's Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a provider shall:

1. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
2. Obtain such coverage from an insurance carrier; or
3. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to Upstate at the time of quote submission or shortly after the quote submission:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain out of State Entities that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is NOT required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable RFP# on the form.)
2. Certificate of Workers' Compensation Insurance:
 - a. Form C-105.2 (9/07) if coverage is provided by Contractor's insurance carrier, Contractor must request its carrier to send this form to Upstate, or
 - b. Form U-26.3 if coverage is provided by the State Insurance Fund, Contractor must request that the State Insurance Fund send this form to Upstate.
3. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
4. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Provider's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, Contractor shall:

1. Be legally exempt from obtaining disability benefits coverage; or

2. Obtain such coverage from an insurance carrier; or
3. Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to Upstate at the time of bid submission or shortly after the opening of bids:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable RFP # on the form.)
2. Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to Upstate; or
3. Form DB-155, Certificate of Disability Benefits Self-Insurance. Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

All of the above referenced forms, except CE-200, SI-12 & DB-155 must name: SUNY Upstate Medical University, Contracts Office- SLC #2050, 750 East Adams Street, Syracuse, NY 13210 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

- Z. Sub-Contracting:** Bidder is prohibited from subcontracting any services provided under the Resulting Agreement to another contractor without prior written approval by Upstate. Contractor must submit to Upstate the name(s) and address(es) of all proposed subcontractors and must describe the portion of work which the proposed subcontractor(s) are to perform/provide and any information tending to prove that the proposed subcontractor(s) have the necessary skill, experience and financial resources to provide the service in accordance with the RFP.

Contractor shall have the sole responsibility to Upstate for the acts or defaults of said subcontractor(s) of such subcontractor's officers, agents and employees, each of whom shall for this purpose, be deemed to be the agent or employee of Contractor to the extent of its subcontract.

Contractor shall execute with each of its subcontracts and shall require all subcontracts to execute a written agreement which shall bind the latter to the terms and provisions of this Request for Proposal insofar as such terms and provisions applicable to the work to be performed by such subcontractors.

AA. Indemnification:

1. Subject to the availability of lawful appropriations (pursuant to Section 41 of the New York State Court of Claims Act, Upstate will hold Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction only to the extent attributable to the negligence of Upstate or of its officers or employees when acting within the course and scope of their employment and within the scope of the Resulting Agreement.
2. Contractor shall be responsible to and shall defend, indemnify, and hold harmless Upstate, SUNY, and the State of New York and their respective officers, trustees, directors, employees, and agents for any and all losses, expenses, damages, and liabilities, including reasonable attorney's fees, arising out of the intentional or negligent acts or omissions of Contractor, its officers, employees, agents, or licensees. This provision shall survive the termination of the Resulting Agreement. Notwithstanding anything to the contrary in the Resulting Agreement, the State reserves the right to join in any action, at its sole expense, when it determines there is an issue involving a significant public interest.

BB. Compliance: Any Agreement awarded under this RFP shall incorporate the following terms:

1. Notwithstanding any other provision in the Resulting Agreement, Upstate remains responsible for ensuring that any service provided pursuant to the Resulting Agreement complies with all pertinent provisions as may be from time to time amended, of Federal, New York State and local statutes, rules and regulations, and policies of the State University of New York Board of Trustees.
2. The parties recognize that the Resulting Agreement at all times is subject to applicable provision, as may be from time to time amended, of Federal, New York State, and local statutes, rules, and regulations, and policies of the State University of New York Board of Trustees. Any provision of law or regulation or judicial or administrative interpretation of same that invalidates, or otherwise is inconsistent with that the terms of the Resulting Agreement that, in the reasonable judgment of either party, would cause one or both parties to be in violation of law or regulation shall be deemed to have suspended the terms of the Resulting Agreement; provided, however, that the parties shall exercise their best efforts to accommodate the terms and intent of the Resulting Agreement to the greatest extent possible consistent with the requirements of law and regulations.
3. If either party determines that a term of the Resulting Agreement, including the compensation to Contractor, is required to be modified or terminated for purposes of compliance with Federal or New York State laws or regulations, or with the policies of the State University of New York Board of Trustees, such party shall promptly notify the other party in writing of the determination, together with sufficient details supporting the determination. Within thirty (30) days of the foregoing notification, the parties shall renegotiate, in good faith, the term(s) required to be modified or terminated to ensure compliance with applicable laws, regulations and policies. If the parties are unable to make a good faith resolution within such thirty (30) day period, either party may terminate the Resulting Agreement upon ten (10) days prior written notice to the other party or such earlier date as may be required by law, regulation or policy.
4. 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). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.
5. Contractor attests that it has adopted and maintains ethical business practices, consistent with applicable laws and regulations; and that it shall adhere to the policies, procedures and requirements promulgated by Upstate's current CMS Approved Accreditation Organization, OIG, OMIG and NYSDOH standards now in existence and as may be amended from time to time during the term of the Resulting Agreement related to their service.
6. Contractor shall comply with Section 163(4)(g) of the New York State ("State") Finance Law ("NYSFL") requiring all contractors (including subcontractors), which provide consulting services for State purposes pursuant to a contract, submit (i) the Contractor's Planned Employment – Form A, (see **Appendix G**) and (ii) the Contractor's Annual Employment Report – Form B (see **Appendix H**), for each such contract. Instructions on completing these forms are attached as **Appendix F**. Section 8(17)(f) of the NYSFL defines a contract for consulting services to be any contract entered into by a state agency for analysis, evaluation, research, training, data processing, computer

programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services. The employment report shall include for each employment category (O*NET, <http://online.onetcenter.org>), within the contract, the number of employees employed to provide services under the contract, the number of hours they work and their total compensation under the contract. Contractor shall be responsible for submitting employment reports to (i) the State agency that awarded the contract, (ii) the State Department of Civil Service and (iii) the State Department of Audit and Control. The Contractor's Planned Employment – Form A, and the Contractor's Annual Employment Report – Form B shall be available for public inspection and copying pursuant to Section 87 of the State Public Officers Law provided that in disclosing such reports, the State agency making the disclosure shall redact the name or social security number of any individual employee that is included in such document.

CC. Termination:

1. Upstate shall reserve the right to terminate any Resulting Agreement awarded under this RFP upon prior written notice to Contractor in the event of any of the following: (i) Contractor makes an assignment for the benefit of the creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against the Contractor and is not dismissed within thirty (30) calendar days from the date of filing; (iii) or all or substantially all of the property of the Contractor is levied upon or sold in any judicial proceeding.
2. Upstate shall have the right to terminate early any Resulting Agreement awarded under this RFP for: (i) unavailability of funds, (ii) cause, (iii) convenience (iv) in the event the State Finance Law sections 139-j and 139-k certifications are found to be false or incomplete, or (v) if applicable, the Department of Taxation and Finance Contractor Certification form, ST 220-CA statements are found to be false or incomplete.
3. Upstate may terminate the Resulting Agreement in the event Contractor fails to comply with any material provision of the Resulting Agreement. Upstate shall give notice of such breach to Contractor specifying the nature of the breach and require Contractor to cure such breach within thirty (30) days of such notice. If said breach is not cured within such thirty (30) day period after the receipt of such notice, Upstate may terminate the Resulting Agreement by delivering a second notice to Contractor, specifying a termination date, which may be immediate upon delivery of the second notice.
4. Upstate may terminate the Resulting Agreement without cause upon thirty (30) days written notice to Contractor.
5. Upstate may terminate the Resulting Agreement for failure of Bidder to comply with provisions of Section V., Letter Y, Insurance.
6. Upstate may terminate any Resulting Agreement pursuant to the terms listed in Section V., letter DD, Excluded Individual/Entities.
7. Upstate may terminate any Resulting Agreement pursuant to the terms listed in Section V., letter II, Ethics Compliance.

DD. Excluded Individual/Entities: Contractor represents and warrants to Upstate that neither it nor any of its affiliates are excluded from participation in any federal health care program, as defined under 42 U.S.C. 1320a-7b(f), for the provision of items or services for which payment may be made under such federal

health care programs and has not arranged or contracted (by employment or otherwise) with any employee, contractor, or agent such that it or its affiliates knows or should know are excluded from participation in any federal health care program, to provide items or services hereunder. Contractor represents and warrants to Upstate that no final adverse action, as such term is defined under 42 U.S.C. 1320a-7e(g), has occurred or is pending or threatened against Contractor or its affiliates or to their knowledge against any employee, contractor, or agent engaged to provide items or services under the Resulting Agreement (collectively "Exclusions/Adverse Actions"). If, at any time during the term of the Resulting Agreement, Contractor or any employee, contractor, or agent is excluded from participation in any federal health care program, Contractor shall immediately notify Upstate of the exclusion, and Upstate shall have the option of immediately terminating the Resulting Agreement, in whole or in part as necessary and applicable in Upstate's sole discretion, and Contractor shall provide a pro rata refund to Upstate based on the period of time remaining in the term of the Resulting Agreement. See Department of Health and Human Services Office of the Inspector General (www.oig.hhs.gov), System for Award Management (www.SAM.gov), New York State Medicaid Disqualified Provider List (www.omig.state.ny.us). Contractor and any of its affiliates shall be responsible to and indemnify and hold harmless Upstate, SUNY, SUNY Upstate Medical University, and the State of New York and their respective officers, trustees, directors, employees, and agents in the event that an excluded individual is identified and had provided or is providing services, indirect or direct, to the Upstate. Contractor shall reimburse, within thirty (30) days, Upstate, SUNY, SUNY Upstate Medical University, and the State of New York for any and all penalties imposed by OIG or OMIG or any other governmental agency due to the fact that Contractor provided said excluded individual to Upstate.

- EE. Iran Divestment Act:** By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regis/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should Upstate receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, Upstate will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Upstate shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

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

- FF. Freedom of Information Law:** During the evaluation process, the content of each bid/proposal will be held in confidence, and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law).

Bidder acknowledges that Upstate is an agency of the State of New York, and as such, any and all agreements to which Upstate is a party are considered public record and subject to disclosure under the

New York State Freedom of Information Law ("FOIL") and acknowledges that Upstate may be required by statute, law, regulation, including without limitation, pursuant to the terms of a subpoena or other similar document to disclose this Agreement or information in this Agreement within the time frames provided by statute, law, regulation, subpoena or other similar document. If Bidder believes that any information in this Agreement constitutes a trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed if requested pursuant to Articles 6 and 6A of the New York State Public Officers Law, Bidder shall submit with their proposal a separate letter specifically identifying the page number(s), line(s), or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret pursuant to section 87(2) of the Public Officers Law and formally requesting that such information be confidential. Only Bidder's proprietary information that satisfies the requirements of section 87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder. Upstate will give prior notice of such disclosure to Bidder to permit Bidder to seek a protective order prior to the time frames for disclosure provided by statute, law, regulation, subpoena or other similar document. If Bidder fails to obtain a timely entry of such protective order and fails to provide Upstate with a copy of a duly executed protective order within the time frames for disclosure provided by statute, law, regulation, subpoena or other similar document, Upstate shall disclose the information requested, and Bidder waives its rights against Upstate for disclosure of the information requested.

Failure by a Bidder to submit such a letter with this Agreement identifying trade secrets shall constitute a waiver of Bidder of any rights it may have under the New York State Public Officers Law relating to protection of trade secrets.

- GG. **Responsibility Provisions:** Pursuant to the Governor's Office memorandum dated April 3, 2013, this Agreement shall be subject to, and hereby incorporates by reference and which is attached hereto as **Exhibit U**. Contractor shall at all times during the Term of **Resulting Agreement** remain responsible. Contractor agrees, if requested by the Chancellor of SUNY or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Chancellor of SUNY or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of Contractor. In the event of such suspension, Contractor must comply with the terms of the suspension order. Activity on this Agreement may resume at such time as the Chancellor of SUNY or her designee issues a written notice authorizing a resumption of performance under this Agreement.

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

- HH. **Bidder Debriefing:** Upon notification of the election and award of a contract, unsuccessful Bidders are entitled to, and shall receive, upon request, a debriefing of the evaluation of their proposal.

- II. **Ethics Compliance:** All Bidders and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing this RFP, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with

those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

- JJ. **Contractor Performance:** Hospital shall evaluate Successful Bidder's performance of its obligations under the Resulting Agreement at least once annually, and shall maintain a record of such evaluation. Bidder's performance will be evaluated based on the following (if applicable): personnel (quality/safety of services), timeliness/availability of responses, appropriateness of services and meeting all RFP requirements.
- KK. **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 and a directory of minority and women-owned business enterprises is available from: New York State Department of Economic Development, NYS Empire State Development, 30 South Pearl Street, Albany, New York 12245, email esd@empire.state.ny.us, website <http://www.empire.state.ny.us/>.
- LL. **Conflict of Terms and Conditions:** Conflicts between documents shall be resolved in the following order of precedence:
- a. Exhibit A
 - b. Exhibit A-1
 - c. Exhibit Z
 - d. Exhibit U
 - e. This Request for Proposal, including all attachments
 - f. Bidder's response
- MM. **Contract Award Protest Procedure:** Upon notification of the selection and award of the contract, the Bidder whose bid or proposal was not selected as the successful bid or proposal is entitled to submit a Bid Protest in accordance with Upstate's Contract Award Protest Procedure-Policy No. CAMP A-27. Upstate's Contract Award Procedure is available at: http://www.upstate.edu/policy/pdf/CAMP_A-27.pdf
- NN. **Extension of Use:** Any agreement resulting from this bid solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any Resulting Agreement if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.
- OO. **Approvals:** Any Resulting Agreement and any amendments hereto shall be conditioned upon and is subject to the written approval of Upstate and, if applicable, the approvals of the New York State Attorney General and the New York State Office of the State Comptroller.
- PP. **Equal Opportunity Clause:** **This Contractor, and if applicable, subcontractor, shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities."**

VI. PROPOSAL SUBMISSION INSTRUCTIONS

- A. Proposals should be submitted in sealed packages and explicitly labeled on the exterior with the Request for Proposal number and description (i.e. "*RFP S-1069: Temporary Clerical, Administrative, and other Support Personnel Services*"). Proposals not labeled in this fashion risk being opened prior to the bid opening date, and thus may result in the proposal being rejected. No telephone or facsimile proposals will be accepted. **Bidder will submit proposals so that update pages can easily be incorporated in the originals. (i.e.: loose-leaf three ring binders or three-prong folder-NO BOUND COPIES) Submit five (5) hard copies of your proposal, each bearing an original signature on RFP cover sheet and notarized Acknowledgment Forms to:**

In addition, please submit one (1) copy of proposal on a flash drive, except for the financial proposal (Exhibit B-1) which should be submitted in a separate envelope as directed in Section III.
C. Submit copy of financial proposal on a separate flash drive and include in the separate sealed envelope.

Overnight or hand delivery: Kimberly Graziano
SUNY Upstate Medical University
Contracts Office, SLC #2050
650 S. Salina Street
Syracuse, NY 13202

- B. Proposals must be received in the University Contracts Office at the address listed above no later than 3:00 pm Eastern Time on Tuesday, September 9, 2014. It shall be the responsibility of Contractor to see that their proposal is properly delivered. Proposals may be hand-carried to the Contracts Office to insure timely delivery. Proposals delivered to any other department or office on the University campus will **NOT** be considered for evaluation and will be returned to Contractor unopened, unless they have been forwarded to and received by the Contracts Office by the stated deadline. Proposals received after the bid deadline will not be considered and will be returned to Contractor unopened.
- C. All Contractor questions and requests for clarification must be made e-mailed to Kimberly Graziano at graziank@upstate.edu no later than 4:00 pm Eastern Time on Wednesday, August 27, 2014. Any questions or requests submitted subsequent to this deadline will not receive a response from Upstate. Bidder is strongly encouraged to submit questions at their earliest convenience. A Bidder should note that all clarifications and exceptions including those relating to the terms and conditions of the Resulting Agreement are to be resolved prior to the submission of a bid. Answers to all questions of a substantive nature will be provided to all Bidders in the form of a question and answer document (Q&A) which will be posted and released with an updated RFP. All Bidders will receive an e-mail notification with link that will provide them with the updated RFP.
- D. All prices and conditions must be included in the original proposal. Prices and conditions not included in the original proposal will be rejected.
- E. Complete one (1) copy of the Public Officers Law Form (See **Appendix A**) and return with your proposal.
- F. Bidder agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire. Upstate recommends that vendors file the required New York State Vendor Responsibility Questionnaire

online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at:

http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep system assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by e-mail at ciohelpdesk@osc.state.ny.us.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Hospital contact or the Office of the State Comptroller's Help Desk for a copy of the paper form. Bidders must acknowledge that they filed a questionnaire online or by paper copy by completing the attached Vendor Responsibility Questionnaire Requirement (See **Appendix B**) and return it with your proposal.

Bidder acknowledges that the Upstate's execution of any Resulting Agreement will be contingent upon the State's determination that Bidder is responsible, and that the State will be relying upon Bidder's responses to the Questionnaire in making that determination. Bidder agrees that if it is found by the State that Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, Upstate may terminate any Resulting Agreement by providing thirty (30) days written notification to the Successful Bidder. In no case shall such termination of a Resulting Agreement by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by Successful Bidder as a result of such termination.

- G. Complete one (1) original copy of the New York State Finance Law §§139-j and 139-k form (See **Appendix C**) and return with your proposal. Upstate reserves the right to terminate a Resulting Agreement in the event it is found that the certification filed by Successful Bidder, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, Upstate may exercise its termination right by providing written notification to Successful Bidder.
- H. Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

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

Contractor certification forms and instructions for completing the forms are attached to this bid. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Bidders may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>

Upstate reserves the right to terminate any resulting agreement in the event it is found that the certification filed by Bidder in accordance with § 5-a of the Tax Law is not timely filed during the term of the agreement or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, Upstate may exercise its termination right by providing written notification to successful Bidder.

Complete one (1) original copy of the New York State Department of Taxation and Finance ("NYSDTF") Form ST-220-CA (See **Appendix D**) and return with your proposal. Document must be sworn and notarized.

Complete one (1) original copy of the NYSDTF Form ST-220-TD (See **Appendix D**) and return to the Department of Taxation and Finance. Document must be sworn and notarized.

- I. Bidder must complete and return with each proposal submitted the Non-Collusion Certification Form included in this package (See **Appendix E**). Original signature needed on all copies.
- J. Complete one (1) original copy of State Consultant Services - Contractor's Planned Employment Report (Form A of **Appendix G**) and return with your proposal.
- K. False Claims: The State University of New York (SUNY) Upstate Medical University (University Hospital) is required by law to provide information to all our contractors and agents regarding the Federal False Claims Act, New York State laws regarding civil or criminal penalties for false claims and payments, administrative remedies for false claims and statements, and whistleblower protections under these laws. **Appendix I** of this RFP satisfies this notification requirement, and by signing the False Claims Acknowledgement Form that is part of **Appendix I**, the Bidder acknowledges that it has received and understands the information provided therein.
- L. Electronic copies of this RFP and related forms are available for download at www.upstate.edu/finance/publicbid/. Word or Excel formats of documents may be requested in writing and will be provided if available.
- M. All information requested by Upstate must be furnished by the Bidder and must be submitted in written form. Proposals must be complete, accurate and in the form requested. Omissions, inaccuracies or misstatements will be sufficient cause for the rejection of a proposal.
- N. All proposals submitted must be sworn to and notarized using the Acknowledgement Form attached to this RFP. All acknowledgment forms must be originals.

- O. Any proposals submitted will be binding, firm and irrevocable for one hundred twenty (120) days subsequent to the date of receipt by Upstate.
- P. Bidder is responsible for all costs, direct or indirect, incurred by Bidder related to the preparation and/or submission of proposals in response to this RFP.
- Q. Bidder may attend the bid opening at which time a representative of the Contracts Office will publicly announce the names of those vendors submitting proposals. Bidder should notify the Contracts Office of their desire to attend the bid opening to ensure adequate space for attendees.
- R. If your company is either unable or unwilling to submit a proposal, complete the enclosed Decline to Participate Form (See Appendix J) in its entirety and return to the address listed on the form.
- S. As per Memorandum dated 12/9/2013 from the New York State Governor's Office, State Agencies are expected to include the attached provision (Appendix K), Encouraging use of New York State Businesses in Contract Performance, in all IFB or RFP solicitations and report results to SUNY System Administration upon request. Please complete Appendix K and submit with your proposal.
- T. All Bidders must complete the enclosed Bidder Questionnaire.
- U. All Bidders must submit with proposals the required M/WBE forms that are a part of Attachment A.

VII. EVALUATION OF PROPOSALS AND CONTRACT AWARD

Upstate may cancel this RFP, in whole or in part, at any time before award. This RFP creates no obligation on the part of Upstate to award or execute an agreement.

Any agreement awarded shall be to the Bidder providing the "best value" to Upstate. "Best value" for purposes of this RFP is defined as the most qualified responsible and responsive Bidder, who meets specifications in the best interest of Upstate, and who delivers services in the most efficient manner, as determined by receipt of the highest evaluation score. Any agreement awarded will require approval of the New York State Attorney General and the Office of the New York State Comptroller. Evaluation of proposals will be done in three phases (I through III).

Phase I- Bidder Qualifications Check

Phase I will consist of a review of proposals to ensure that all Bidder qualifications are met. Failure to meet any of the Bidder qualifications that are listed in Section III., will result in a proposal being considered non-responsive and will result in elimination from further evaluation. All Bidders that meet all the qualifications will move to Phase II.

Phase II – Technical Evaluation (worth 50% or 50 points)

Phase II will consist of an evaluation of the Bidder's technical proposal and references.

An evaluation committee will review and score each technical proposal based on the following criteria:

- A. Capacity- 20%: This criterion will consider Bidder's capacity to attract Temporary Employees and ability to provide a high volume of Temporary Employees as needed.
 - 1. Annual hours billed in last twelve months for each job title (or similar title) listed on Exhibit B-1 - 5%
 - 2. Ability to fill large volume positions in a timely manner and keep positions filled. – 10%
 - 3. Fringe Benefits provided to Temporary Employees- Mark-up breakdown review - 5%

- B. **Management Depth and Experience – 5%:** This criterion will consider the credentials and background of the Bidder's principle officers and local office management staff.
- C. **Training/Screening & Recruitment – 5%:** This criterion will be based on Bidder's training procedures/program as well as how personnel assigned to Upstate will be evaluated, screened and recruited.
- D. **Quality Control – 10%:** This criterion will consider the Bidder's ability to provide qualified/acceptable candidates and their ability to handle issues and problem Temporary Employees.
- E. **References – 10%:** Bidder's previous experience with Upstate, if applicable, will be of primary consideration. Responses of other client references provided by Bidder will be evaluated as well based on responses to set of questions asked of them by evaluator. All references will be asked the same set of questions.

Phase III – Cost Evaluation (worth 50% or 50 points)

Phase III will consist of the evaluation and scoring of Bidder's cost proposal.

Cost points will be awarded as follows: Lowest Total Bid Price will receive 50 points.
All other bids will be awarded points based on a ratio of their cost to the Lowest Bid Cost.

EXAMPLE:

Vendor X Total Bid Price = \$260,000

Vendor Y Total Bid Price = \$285,000

Vendor Z Total Bid Price = \$320,000

Vendor X cost points = $50 \times (260,000/260,000) = 50$

Vendor Y cost points = $50 \times (260,000/285,000) = 45.50$

Vendor Z cost points = $50 \times (260,000/320,000) = 40.50$

Upon completion of all Phases one award will be made to Bidder whose proposal met all bidder qualifications, obtained the highest combined score for all phases and whose proposal represents the best value to the State.

In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient.

Any contract awarded will require the written approvals of the New York State Attorney General and the Office of the New York State Comptroller.

**Questions & Answers for RFP S-1069
Temporary Clerical, Administrative and Other Support Personnel Services**

- Q1. Do we need to submit the resumes for the positions mentioned in the RFP? If yes, then how many?
R1. Resumes for candidates are not expected for the submission of proposals. We would only want resumes of candidates when we contact the Successful Bidder to fill a temporary need.
- Q2. Is there any incumbent? If yes, please provide the contract number and value.
R2. There are two current contracts for these services. As stated in the RFP, annual expenditures for services are approximately \$2.5M.
- Q3. Can I get the Excel format for the Price Sheet?
R3. Yes, this is a requirement. Three sheets in Excel include: instructions, price sheet and mark up % breakdown. All Bidders that intend to bid must request the Excel spreadsheet from Kim Graziano – graziank@upstate.edu
- Q4. Can we submit more than one pay rate/bill rate for the prevailing wage positions?
R4. No. For the Cleaner's title, there should only be one rate listed for that title.
- Q5. What is the average length per temporary assignment?
R5. Average length is approx. 6 months.
- Q6. Reference is made to the excel spreadsheet (exhibit B-1) supplied to us for pricing; The section "Overtime Bill Rate" only reflects the 1.5 and no mark-up. Could you please clarify that the "bill rate" for anyone receiving overtime would be pay rate times 1.5 times our markup?
R6. Overtime is 1.5 times the Pay Rate only.
- Q7. In regards to the "Staffing Plan" (Form 108), our firm does not place temporary employees based on these requirements and we do not track this information at this time. How would you like us to complete said form at this time?
R7. Complete the form using your firm's staffing and attach to the form a statement explaining why you did not include your temporary employee pool.
- Q8. Should the numbers for the past 12 months be literally the past 12 months (August 2013-July 2014) or should they be only for 2013? The instruction sheet lists both time frames.
R8. Upstate's historical usage is based on 2013 numbers. Bidders' numbers should be hours billed in the past 12 months.
- Q9. I want to clarify the question that was asked regarding overtime bill rate. If someone works 48 hours and their "pay rate" is \$10 an hours, we would bill the "bill rate" (pay rate x markup=bill rate) for the first 40 hours, and for the 8 hours of overtime the temporary employee would receive a "pay rate" of (\$10 x 1.5=\$15) – but that is not the "bill rate" correct?
R9. As stated in the RFP, Section V. Letter T., "Overtime and Holiday Pay"- "If it becomes necessary for a temporary service worker to work in excess of forty (40) hours, or to work one of the six recognized holidays, Upstate shall be billed for such service at the rate of one and one-half (1 ½) times the PAY RATE (not the Bill Rate) for those hours as indicated in Exhibit B-1." The spreadsheet is correct in that markup is not added to OT bill rate. Upstate will be billed 1.5 times the pay rate for OT and Holiday(s) worked.
- Q10. Does the agency have the ability to bid on all positions yet not service or fill all positions? Whether due to difficulty finding candidate or other factors.....
R10. Agencies bidding should have the ability and capacity to provide for all titles listed in the RFP. If the Primary Contractor cannot fill an opening due to no proper candidates, the Secondary Contractor will be requested to provide for the opening. Failure of a contractor to consistently not provide a candidate when requested could lead to termination of the agreement.
- Q11. Is there a provision for the agency to terminate the agreement? SUNY has a variety of reasons to terminate the agreement yet nothing for the agency to do so.....

- R11. There is no provision for the agency to terminate the agreement in the RFP. A provision could be added to the final agreement where the agreement could be terminated upon mutual written agreement of the parties.
- Q12. Does an agency have to bid on all titles or can they pick and choose which ones to bid on?
- R12. As per the RFP, Bidders are to bid on all titles listed. Failure to bid on all titles is an immediate disqualification.
- Q13. Do you reimburse for vacation/sick days?
- R13. No. Upstate will only pay for hours worked.
- Q14. Do you cover the pre-employment screening charges?
- R14. No.
- Q15. When completing Exhibit B-1, we were using one mark-up for clerical and one for cleaners/laborers- should we submit two of the tables to breakdown how we determine our different mark-ups or do you just want one table with one of the mark-ups?
- R15. Please provide two tables to provide breakdown of the two different mark-ups.
- Q16. With regards to "Form A" (appendix G), we are just estimating number of people by the number provided in Exhibit B-1 from "Historic Annual Usage" is that correct?
- R16. Yes, that is correct.
- Q17. Is the acknowledgment form (notary form) acknowledging all signatures in the proposal?
- R17. It is acknowledging the signature of the person signing the cover page of the RFP. Forms that require a notary will need to be notarized on the forms themselves.
- Q18. What if our expenses sky rocket as a result of the Affordable Care Act? Will there be allowances to increase our bill rate?
- R18. No. The only allowance to increase the bill rate is stated in the RFP which is the CPI increase or in case of the Cleaner title, the prevailing wage rate.
- Q19. Are the bid winners of the last SUNY RFP public knowledge? And if so are the rates they provided to SUNY also public knowledge?
- R19. The bid winners of the last SUNY Upstate RFP for these services (RFP S-950) were posted on Upstate's website under bid results for RFP S-950. www.upstate.edu/bid Since this was a RFP that is not based on cost alone, we do not post the rates. Rates can be requested through FOIL by e-mailing foil@upstate.edu
- Q20. Can you please provide clarification regarding the Building Services Rate? How does this requirement relate to this contract? How is the requirement charged to an agency? Referring to section of revised RFP that states:
"Please make note of new requirement regarding building service rates (Article 9). Rates will be determined annually on July 1. They are in effect through June 30 of the following year. Contractor must pay the newly determined rates each year."
- R20. This comes from the Department of Labor regarding Article 9 Building Services titles which Cleaners fall under. The IMPORTANT NOTICE is included in the prevailing wage material that was provided in the revised RFP. In the past, a contract that involved Article 9 titles and had a PRC#, Contractors only had to stick to the one rate under the PRC# provided in the contract for the term of the contract. DOL's new policy is that Contractors are required to use the new schedule each year and cannot use the same PRC provided in the contract originally for the term of the contract. Please see Section V., letter R. of the RFP regarding billing Upstate new prevailing wage rate.
- Q21. Regarding the prevailing wage for cleaners, what is the pay rate for hours between 5 PM and 7 AM on weekdays?
- R21. The prevailing wage schedule does not have a shift differential listed; therefore, the prevailing wage would be what is listed on the schedule.
- Q22. Will Upstate allow temporary employees to work in different departments for supervisors other than the ones listed on the original job req PO? If so, for safety, billing and insurance reasons, how will the agency be notified that employees are working in different areas?
- R22. This should not happen-but we are not always notified if it does.

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Q23. To satisfy prevailing wage requirements, will cleaner job reqs indicate whether the employee will be cleaning or stripping floors?

R23. Yes.

Q24. How does SUNY plan to address ACA requirements as it applies to qualified temporary workers?

R24. **The Temporary Staffing Agency is the employer of the Temporary Employee, therefore, is responsible to address ACA requirements.**