

REVISION #1
IFB S-1166
TEMPORARY CLINICAL STAFFING SERVICES

Revisions:

- 1) Section 7(26)(b) on page 31.
- 2) Questions and Answers attached starting on page 110.



UPSTATE MEDICAL UNIVERSITY

INVITATION FOR BID

TEMPORARY CLINICAL STAFFING SERVICES

IFB S-1166

Responses Due:

Friday, December 9, 2016

2:00 P.M. Eastern Standard Time

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SUMMARY INFORMATION FORM

THIS PAGE MUST BE SIGNED AND RETURNED WITH BIDDER'S RESPONSE

IFB #: S-1166	IFB Title: Temporary Clinical Staffing Services	IFB Release Date: November 9, 2016 Electronic copies of this IFB are available at: www.upstate.edu/bid
Key Events		
Questions/Requests for clarification due	November 23, 2016 4:00 P.M. EST.	
Response to questions/requests for clarifications issued to all Bidders	December 1, 2016	
Pre-Bid Conference (if applicable)	N/A	
Notice of Intent to Bid Due (if applicable)	N/A	
Proposal Due Date and Time	December 9, 2016 2:00 P.M. EST.	
Anticipated Notification of Award	January 2017	
Anticipated Contract Start Date	May 1, 2017	
Anticipated Term Length of Contract	Three (3) Years with optional Two (2) Year Renewal	
<i>Upstate reserves the right, in its sole discretion, to modify the above schedule. Bidders will be notified via email of any changes in a timely manner.</i>		
Contact Information		
Primary Contact: William Shepard Contracts Office, SLC #2050 SUNY Upstate Medical University 750 East Adams Street Syracuse, NY 13210 Telephone: (315) 464-4680 Email: shepardw@upstate.edu	Secondary Contact: Chris Mieczkowski Director of Contracts Contracts Office, SLC #2050 750 East Adams Street Syracuse, NY 13210 Telephone: (315) 464-4680 Email: mieczkoc@upstate.edu	Other Contact:
Restricted Period		
In accordance with the requirements of New York State Finance Law Sections 139j and 139k ("Lobbying Law"), the restricted period for this procurement is now in effect. Therefore, all communications regarding this procurement must be handled through the State University of New York's designated contacts only.		
Bidder Information		
Legal Business Name of Company Bidding:	Bidder's Federal Tax Identification Number:	
D/B/A – Doing Business As (if applicable):	NYS Vendor ID Number:	
Street Address:	City/State:	Zip Code:
If applicable, place an "x" in the appropriate box: (check all that apply)		
<input type="checkbox"/> Small Business (if checked, provide # of employees ____) <input type="checkbox"/> Minority Owned Business (NYS Certified) <input type="checkbox"/> Disabled Veteran Owned Business <input type="checkbox"/> Women Owned Business (NYS Certified)		
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> We are unable to bid at this time because:		
Bidders Signature:	Title:	
Printed Name:	Date:	

THIS PAGE MUST BE SIGNED AND RETURNED WITH BIDDER'S RESPONSE

Section 1: OVERVIEW

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 Nursing, (iv) the College of Graduate Studies, (v) Upstate Golisano Children’s Hospital, (vi) Upstate University Hospital (“Downtown Campus”), the region’s only tertiary care teaching hospital and (vii) Upstate University Hospital Community Campus (“Community Campus”). Upstate is the largest employer in the greater Syracuse area employing over 9,000 people, with expectations of continued growth throughout the next decade.

Section 2: PROJECT SPECIFICATIONS

A. Scope of Services

Upstate is requesting bids from qualified temporary employment agencies (“Contractor” or “Bidder”) for the provision of temporary clinical staffing services to meet Upstate’s staffing needs with intent of awarding contracts to the Bidders providing the best value as defined in Section 2(D) to Upstate.

B. Contract Volume

Upstate currently employs approximately one hundred (100) full time temporary clinical employees on average and at any given time per month. Approximately eighty (80) of the temporary clinical staffing employees employed at Upstate are Registered Nurses. Approximately twenty (20) of the temporary clinical staffing employees employed per month at Upstate work as one of the other temporary clinical staffing titles listed in Exhibit B. 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 actual demand of Upstate.

C. Contract Term

Under a Resulting Agreement, the contract term for services outlined herein shall be for a period of three (3) years, and it may be renewed for an additional two (2) year period upon the same terms and conditions. Should either party decide not to renew the agreement, the respective party shall notify the other party in writing at least one hundred eighty (180) days before the expiration of the initial 3 year term. The contract start date is anticipated to be May 1, 2017.

D. Method of Contract Award

Upstate may cancel this IFB, in whole or in part, at any time before award. This IFB creates no obligation on the part of Upstate to award or execute a contract. The contract award for this IFB will be made on the basis of “best value.” “Best value,” for purpose of this IFB, is defined as the lowest-priced responsible and responsive Bidder, who meets specifications in the best interest of Upstate. To be considered responsible and responsive, Bidder must submit a complete proposal that satisfies all requirements stated in the IFB by the due date and time. A proposal which fails to conform to requirements may be considered NON-RESPONSIVE and may be disqualified. Upstate will award multiple agreements for each job title contained in Exhibit B to all qualified vendors able to satisfy the requirements of this IFB. Upstate shall contact Successful Bidders in a specific order

when services are needed. A prioritized call down list will be created for each job title. The order of each call down list will be determined by the lowest Bill Rate/Hour. Bidders must submit a Pay Rate/Hour and a Markup Multiplier for each job title in which it is interested in providing candidates to Upstate in the Exhibit B-1 Cost Worksheet.

The Pay Rate/Hour is defined as the hourly rate which Bidder pays its temporary clinical staffing to perform a given job title.

Markup is defined as the amount added to Pay Rate/Hour of providing the service, which covers expenses and profit. A Markup Multiplier is calculated as the quotient of the Bill Rate/Hour that the bidder will charge Upstate divided by the Pay Rate/Hour. For example, if a Bidder's Pay Rate/Hour for a given job title is \$41.00/Hour and the Bidder would charge Upstate a Bill Rate of \$73.80/Hour for a candidate's services, the Markup Multiplier would be 1.80 ($\$73.80 / \$41.00 = 1.80$).

The Bill Rate/Hour is the rate which Bidder would charge Upstate for the services of its employees for each position.

Bidder must submit both a Pay Rate/Hour and a Markup Multiplier in the respective yellow columns on the Excel spreadsheet version of the Exhibit B-1 Cost Worksheet for each job title in which it is interested in providing candidates to Upstate. The calculation is Pay Rate/Hour x Markup Multiplier = Bill Rate/Hour. The Excel spreadsheet version of the Exhibit B-1 Cost Worksheet will automatically multiply the Pay Rate/Hour x Markup Multiplier to equal the Bill Rate Per/Hour.

In determining the call down lists for each job title, if multiple bidders provide the same Bill Rate/Hour for a given title, ties will be broken in favor of the vendor which has the highest Pay Rate/Hour. In the event two offers are found to be substantially equivalent, Upstate's procedure for a tie breaker is completed in the following manner:

1. One of the vendors is a New York State certified minority-owned or women-owned business enterprise (M/WBE).
2. The location of vendor, using the address of the principal place of business.
 - (a) Syracuse area
 - (b) Central New York
 - (c) New York State
 - (d) Northeast Region of the United States, as defined by the United States Census Bureau, comprising of nine states: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.
3. Names drawn from a basket or hat by a Purchasing Designee.

Tentative award of a contract shall consist of written notice of the contract award by Upstate to the Successful Bidder, who shall thereupon be obligated to execute a formal contract. Any contract awarded will require the written approvals of the New York State Attorney General and the Office of the New York State Comptroller.

E. Utilization

The job titles for which Upstate wishes to have available to it on a temporary employment basis are listed in Exhibit B. The job titles that will be overseen by Upstate's Nursing Support Services Office are as follows: Certified Nursing Assistant (CNA), Licensed Practical Nurse (LPN), Mental Health Therapy Aide, Nurse Practitioner, OB Technician, Physician Assistant, Registered Nurse, Safety Companion (1:1 Observation), and Surgical/Operating Room Tech (Adult or Pediatric). All other job titles listed in Exhibit B will be overseen by Upstate's Human Resources Recruitment Office. Candidates may be utilized at either of Upstate's campuses, depending on operational needs. Upstate reserves the right to utilize staffing in any needed capacity based on operational need or skill set at that time. Upstate is cognizant that no one bidder will be able to meet one hundred percent (100%) of its need for services at all times. Therefore, Upstate will award multiple agreements for each job title contained in Exhibit B to all qualified vendors able to satisfy the requirements of this IFB. Prioritized call down lists will be created to contact Successful Bidders in a specific order when services are needed. A Successful Bidder's ranking could be different for each title in which they bid. Utilization of awarded contracts shall be based first upon the order of their ranking on the call down lists and secondly upon availability of a qualified candidate.

Section 3: PROPOSAL REQUIREMENTS**A. Mandatory Requirements**

To be deemed "responsive" to the IFB, Bidder must meet all of the mandatory qualifications listed below. To confirm that Bidder's proposal meets all mandatory qualifications, Bidder must provide a written response to each of the items below to explain if and how they meet the qualifications that are listed. In the event a Bidder's proposal is determined by Upstate to be "non-responsive," Upstate is required by its contracting procedures to disqualify the proposal. A disqualified proposal will not be further evaluated or considered for contract award. If Bidder does not provide a written response to each mandatory requirement below or does not submit any requested information, Bidder's proposal will be deemed "non-responsive" and the proposal will be rejected. Label your reply accordingly so that your answers are easily located.

1. Bidder must have at least two (2) years of experience providing temporary clinical staffing services. **State "Yes" or "No" whether your firm has at least two years of experience providing temporary clinical staffing services.**
2. **State the number of years your firm has been providing temporary clinical staffing services.**
3. **Bidder must provide a minimum of three (3) references (not including Upstate) from healthcare facilities.** Complete the attached Vendor Reference Form (Attachment 4) for each reference submitted. **REFERENCES MUST BE SUBMITTED WITH BID. NO BIDS WILL BE CONSIDERED IF REFERENCES ARE NOT SUBMITTED WITH BID.** Upstate reserves the right to contact, make inquiries, and visit any facility named.
4. Each Successful Bidder will be expected to pay for travel expenses, housing and other ordinary costs associated with the placement of all temporary clinical staffing personnel at Upstate. Such costs include any pre-employment drug screening, background screening, physicals or self-studies prior to New Employee

Orientation, and must be considered and included by the Bidder when calculating their rates. **State “Yes” or “No” whether your firm will pay for the expenses listed in this section.**

5. Upstate uses a vendor management system (“VMS”) to submit staffing needs and receive candidate information from its contracted agencies. Currently, Upstate utilizes Candidate Direct Marketplace Premier (“Marketplace”), a VMS software application which is hosted by StayStaffed Services, LLC (“StayStaffed”). This application is made accessible for use via the Internet. Successful Bidder must agree to StayStaffed’s Agency User Subscription Agreement in order to use Marketplace. Usage of the site is free for Upstate’s contracted agencies. Each Successful Bidder must use this VMS or any other VMS that Upstate may use during the term of the Resulting Agreement in order to receive Upstate’s temporary clinical staffing needs and submit candidates in response to Upstate’s needs. If Upstate’s contract with StayStaffed expires or terminates during the term of the Resulting Agreement, Upstate reserves the right to change to another vendor that offers these services and Successful Bidder must use the site of the new vendor that Upstate chooses. **Bidder must state “yes” or “no” whether they agree to use Upstate’s VMS or any other VMS that Upstate may use during the term of the Resulting Agreement in order to receive Upstate’s temporary clinical staffing needs and submit candidates in response to Upstate’s needs.**

B. Pricing

Bidders can provide a quote for any or all job titles. **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 Section 2(D) above and **Exhibit B-1 for instructions on completing the Cost Worksheet.** Do not add titles to Exhibit B-1. **Both pages of Exhibit B-1 should be included in proposal package.** Other than changes to the Bill Rates listed below in Section 7(35) that are based on fluctuations in the unadjusted Consumer Price Index for All Urban Consumers (CPI-U) of All Items in the Northeast Region, if awarded a contract, Successful Bidder must honor the Bill Rates it provides in Exhibit B-1 for the term of any Resulting Agreement.

Section 4: BID SUBMISSION INSTRUCTIONS

A. Bid Submission Instructions

1. A Bidder’s proposal shall address the Bidder’s ability and methodology for providing Upstate with the requested services. To be deemed “responsive” to this IFB, a Bidder must meet all requirements and qualifications, and its written proposal must address all points and questions appearing in this IFB. In the event a Bidder’s proposal is determined by Upstate to be “non-responsive,” Upstate is required by its contracting procedures to disqualify the proposal. A disqualified proposal will not be further evaluated or considered for contract award. **To facilitate Upstate’s review of proposals, Bidders must address all points and questions that appear in this IFB, and should do so in the order that they appear. Responses should be labeled to correspond to the numbers/letters of the sections and subsections of this IFB.**

2. Prepare a clearly readable proposal that includes: (a) a cover letter indicating that the IFB instructions and project specifications are understood and Bidder’s ability to meet and comply with all project specifications and (b) all required information.

3. Bidders must submit all information requested by Upstate 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.

4. Proposals should be submitted in sealed packages clearly labeled on the exterior with the IFB number and title. Proposals not labeled as instructed risk being opened prior to the bid opening date, which may result in the proposal being rejected. All bids and accompanying documentation shall become the property of Upstate and shall not be returned.

5. No telephone, facsimile, emailed or otherwise electronically submitted proposals will be accepted.

6. The proposal must be fully and properly executed by an authorized person, and the authorized person's signature must be notarized. By signing, you certify (i) your express authority to sign on behalf of yourself, your company, or other entity; (ii) your full knowledge and acceptance of this IFB, Exhibit A (State University of New York Standard Contract Clauses), Exhibit A-1 (State University of New York Affirmative Action Clauses), State Finance Law §139-j and §139-k (Procurement Lobbying Certification); and (iii) that all information provided is complete, true and accurate. By signing you further affirm that you understand and agree to comply with the procedures on permissible contacts relating to this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b). These procedures may be accessed at: Procurement Lobbying: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

7. Submit three (3) hard copies of your proposal and one thumb drive, **each hard copy bearing an original signature and notarized Acknowledgement Forms**, to the address provided below. Proposals must be received in the office identified below by the due date and time provided on the Summary Information Form on Page 6 of this IFB. Bidders mailing their proposals must allow sufficient time to ensure receipt by the due date and time. Bidders are cautioned that even when using a trackable mailing/courier/messenger service, proposals must be received by the due date and time. While proposals may be signed for by personnel at Upstate prior to the due date and time, this does not guarantee that the identified office will receive the proposal by the due date and time.

8. Address for submission of proposal:

Regular Mail: William Shepard
Contracts Office, SLC Suite 2050
SUNY Upstate Medical University
750 East Adams Street
Syracuse, NY 13210

Overnight or hand delivery: William Shepard
Contracts Office, SLC Suite 2050
SUNY Upstate Medical University
650 South Salina Street
Syracuse, NY 13202

Please note that the addresses listed above are different. If you are sending regular mail, please allow enough time for your package to be delivered to the Contracts Office as your package will first go to Upstate's mail room and then will be delivered to the Contracts Office, which is located off-site.

9. Bidders unable or unwilling to submit a proposal are asked to complete the Summary Information Form on Page 6 of this IFB and check the box indicating that no bid is being submitted.

10. All prices must be included in the original proposal. Prices not included in the original proposal will be rejected.

11. Bidders must identify the name and address of all proposed subcontractors and describe the portion of the work that the proposed subcontractors are to perform. Bidders must also provide information that the proposed subcontractors have the necessary skill, experience and financial resources to provide the services requested in this IFB. 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.

12. The submission of a proposal constitutes a non-revocable, binding offer to perform and provide said services. Such binding offer shall be firm and not revocable for a period of one hundred twenty (120) days from bid opening. After 120 days, the proposal may remain in effect, subject to withdrawal communicated in writing signed by the Bidder. If this IFB is for the sale of goods pursuant to §2-205 of New York State Uniform Commercial Code, the proposal shall be firm, binding and not revocable for a period of ninety (90) days.

13. Bidder is responsible for all costs that it incurs, direct or indirect, related to the preparation and submission of a proposal in response to this IFB.

14. Each copy of the proposal should be accompanied by the following:

- Summary Information Form (page 6 of this IFB)
- Notary Acknowledgement Form (follows the last page of this IFB)
- Attachment 1: Bid Submission Checklist and the documents indicated thereon
- Attachment 2: Procurement Lobbying Act Certification
- Attachment 3: Non-Collusive Bidding Certification
- Attachment 4: Vendor Reference Form
- Attachment 5: Public Officer's Law Form
- Attachment 6: False Claims Acknowledgement Form

- Vendor Responsibility Documentation as set forth in Section 7(17).
- Minority and Women-Owned Business documentation as set forth in Section 7(11).
- Equal Employment Opportunity documentation as set forth in Section 7(12).
- Tax Certification ST-220-CA as indicated in Section 7(40).
- Proof of Workers' Compensation insurance coverage and Disability Benefits insurance coverage as set forth in Section 7(28).
- Exhibit B-1 – Cost Worksheet as indicated above in Section 3(B).

B. Bidder Questions

If a Question and Answer period is provided for this solicitation, the schedule will be shown on the Summary Information Form, "Key Events," provided after the Table of Contents of this IFB. All questions must be submitted in writing, citing the particular IFB page, section, and paragraph numbers where applicable. Questions must be **EMAILED** to arrive no later than 4:00 pm Eastern time on the date indicated and should be directed to the Designated Contacts shown on the Summary Information Form. Questions received after the closing date for inquiries will not be answered. Only written answers are official. All Questions and Answers will be issued as addenda to this IFB and will be provided in writing to all potential Bidders.

C. Pre-Bid Proposal Meeting

If a mandatory or optional Pre-Bid Conference is held for this solicitation, the date, time, and whether the conference is mandatory or optional is reported on the Summary Information Form, "Key Events," provided on Page 6 of this IFB.

D. Site Visit

If a site visit is required for this solicitation, the date and time is reported on the Summary Information Form, "Key Events," provided on Page 6 of this IFB.

E. Bid Opening

Bidders may attend the bid opening, at which an Upstate representative will publicly announce the names of Bidders who have submitted proposals. To ensure adequate space for attendees, Bidders must notify the designated contact(s) identified on the Summary Information Form (Page 6 of this IFB) of their desire to attend the bid opening.

Section 5: GENERAL INFORMATION

A. Electronic IFB

Electronic copies of this IFB and related forms are available at www.upstate.edu/bid

B. Upstate's Reserved Rights

Upstate reserves the right to:

1. Reject any and all proposals received in response to this IFB.
2. Reject any or all portions of any proposal, to negotiate terms and conditions consistent with this IFB and to make an award for any or all remaining portions.
3. Withdraw the IFB at any time, at Upstate's sole discretion.
4. Make an award in whole or in part.
5. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB.
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a Bidder's qualifications, experience ability or financial standing, and any material or information submitted by the Bidder in response to Upstate's request for clarifying information, in the course of evaluation and/or selection under the IFB.
7. Prior to the bid opening, amend the IFB specifications to correct errors of oversights, or to supply additional information, as it becomes available.
8. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
9. Request references and contact any or all references.
10. Clarify or correct cost or cost figures with the concurrence of the Bidder if mathematical or typographical errors exist.
11. Advise the Successful Bidder(s) of an objectionable employee(s) and/or subcontractor(s).
12. Waive minor irregularities.
13. Waive requirements or amend this IFB upon notification to all Bidders. Mandatory requirements may be eliminated if unmet by all Bidders.
14. Negotiate with Bidders responding to this IFB within the requirements necessary to serve the best interests of Upstate.
15. Begin contract negotiations with another Bidder in order to serve the best interests of Upstate should contract negotiations with the Successful Bidder be unsuccessful within a time frame acceptable to Upstate.

16. Request clarifications from Bidders for purposes of assuring a full understanding of responsiveness from all potential awardees prior to award.
17. Award no contract.
18. Change the due date of the IFB.

C. Contract Award

Receipt of this IFB does not indicate that Upstate has predetermined Bidder's qualifications to receive a contract award. A contract award, if made, shall be based on evaluation of the bid in accordance with the criteria set forth in this IFB. The Successful Bidder will be notified by Upstate by a confirmed letter.

D. Post Award Procedures

Bidders wishing to participate in a debriefing may make a request in writing within 5 business days of Upstate's notification of the contract award. The written request shall be submitted to the email address specified for Questions and Answers in this IFB. Upstate will endeavor to schedule a debriefing within 10 business days of its receipt of the request. Bidders' written request must state whether Bidder will be attending with counsel, to allow Upstate to arrange for Upstate counsel attendance if so determined. Bidders wishing to file a bid protest may do so in accordance with Upstate's procedures, available at:

http://www.upstate.edu/policies/documents/UW_C-04.pdf

Section 6: STAFFING REQUIREMENTS

A. Availability

Each Successful Bidder must ensure that qualified temporary medical personnel are available within the range of dates supplied by Upstate.

B. Placement

When a temporary placement opportunity is available, Successful Bidder will be notified via Upstate's VMS. Unless otherwise notified, Successful Bidder will have three (3) business days to respond after they are notified of a need. Depending on the job title, official notifications for placements through any Resulting Agreement will be handled by either Upstate's Nursing Support Services Office or Upstate's Human Resources Recruitment Office. See Section 2(E) above regarding usage of contracts.

C. Pre-Placement Contact

Successful Bidder 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 Nursing Support Services Office or the Human Resources Recruitment Office. Unsolicited candidates/resumes will not be considered.

Temporary clinical staffing candidates provided by the Successful Bidder shall not contact Upstate employees to schedule pre-employment interviews. Upstate will contact qualified temporary clinical employment personnel candidates for pre-employment interviews. Prior to a potential hire, the Successful Bidder shall not provide temporary clinical employment personnel with the contact information of Upstate departments and/or Upstate employees which have staffing needs unless or until Upstate employees have expressly consented to such contact.

If hired, Successful Bidder's candidate may be utilized at either of Upstate's campuses, depending on operational needs.

D. Reporting/Accountability

Successful Bidder's employees assigned to Upstate must report and take their instructions from the appropriate Upstate department head or his/her designee.

E. Conduct and Removal of Temporary Personnel

1. Conduct. All temporary clinical staffing provided by the Successful Bidder to Upstate must be cognizant of, and comply with, the required and applicable laws, rules and regulations, including the requirements of Upstate, those promulgated by Upstate's current Centers for Medicare and Medicaid Services (CMS) approved accreditation organization, New York State Department of Health (NYSDOH), Occupational Safety and Health Administration (OSHA), and the Public Employee Safety and Health Bureau (PESH). Without limiting responsibility of the Successful Bidder for the proper conduct of temporary clinical staffing and the protection of Upstate property, the conduct of temporary clinical staffing provided by the Successful Bidder will be guided by Upstate's codes of conduct, policies and bylaws, and by such special other written instructions applicable to the services provided by such personnel 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 Upstate's community are expected to maintain the highest level of professional behavior, ethics, integrity, and honesty, regardless of position or status. Upstate's policies and bylaws are confidential by nature. However, temporary clinical staffing provided by the Successful Bidder will be provided access to these documents once they have reported to work at Upstate.

2. Removal. Upstate reserves the right to immediately terminate any temporary clinical staffing provided by the Successful Bidder under a Resulting Agreement if any of the Successful Bidder's employees, contractors or agents are excluded from participation in any federal health care program, are listed on one of the federal healthcare exclusionary lists, are guilty of improper conduct, are not qualified or needed to perform the work assigned to them, or if they fail to meet a level of satisfactory performance, as determined solely by Upstate. Upstate may also terminate any temporary clinical staffing provided by the Successful Bidder who are not current with their licensures or related certification. If such licensures or related certifications expire at the end of the month there will be no grace period, and it will result in the inability of the temporary clinical staffing provided by the Successful Bidder to work at Upstate until licensures or related certifications have been obtained. It may also lead to the termination of temporary clinical staffing provided by the Successful Bidder, which shall be at the discretion of Upstate. Timely and reasonable notice of such dissatisfaction and termination will be made by Upstate to the Successful Bidder to determine who will notify the

individual of his/her termination. If the individual is terminated during the first week of their assignment, the Successful Bidder will credit Upstate for the hours billed related to that individual. Upstate will have no liability for payment to the Successful Bidder beyond the effective termination date. The Successful Bidder shall be responsible for assuring that all temporary clinical staffing provided by the Successful Bidder and assigned to Upstate return all property which belongs to Upstate, including vocera equipment and Upstate identification badges. In the event that property is not returned to Upstate, the Successful Bidder shall be monetarily responsible for replacement costs to Upstate.

F. Parking and Other Regulations of Upstate

All temporary clinical staffing provided by the Successful Bidder who will be parking at Upstate are required to pay the required parking fees. It will be the responsibility of the temporary clinical staffing provided by the Successful Bidder to contact Upstate's Parking Office to make arrangements for the payment of parking passes or permits, if required. Illegally parked vehicles are subject to ticketing and/or towing. Temporary clinical staffing provided by the Successful Bidder will operate vehicles responsibly under campus rules and regulations and will not park vehicles in unauthorized areas. Temporary clinical staffing provided by the Successful Bidder will abide by all the applicable rules and regulations of Upstate, and breach whereof shall make the Successful Bidder liable under such rules and regulations.

G. Temporary Clinical Staffing on Assignment Prior to a Resulting Agreement

Upstate currently has temporary clinical staffing on assignment at Upstate from various temporary medical staffing vendors. Under a Resulting Agreement, such temporary clinical staffing that were contracted for prior to the award of a contract to Successful Bidder shall remain the employees of their respective employers throughout the duration of their assignments. Such assignments are typically thirteen (13) week terms.

H. Proper Identification

In order to supply temporary clinical staffing provided by the Successful Bidder with a Upstate identification badge, the Successful Bidder will provide Upstate's Nursing Support Services Office or Upstate's Human Resources Recruitment Office (depending on the position for which the employee was hired) with the social security number and date of birth of their employees. Temporary clinical staffing provided by the Successful Bidder that are providing services on Upstate property shall display Upstate identification badge per Upstate policy V-12, incorporated herein as Exhibit D. Each temporary clinical staffing employee provided by the Successful Bidder must successfully complete the screening requirements listed in Section V(I) of this IFB before the employee will be issued an identification badge. Temporary clinical staffing provided by the Successful Bidder will be issued an identification badge at orientation.

I. Pre-placement Screening

Prior to any work performed by successful Bidder's employees, they must successfully pass a drug test and criminal background investigation. Written verification must be provided to either Upstate's

Nursing Support Services Office or Upstate's Human Resources Recruitment Office depending on the position for which the employee was selected. Any and all associated costs will be the responsibility of successful Bidder.

1. Drug Screening.

(a) Prior to an individual's assignment to Upstate, the Successful Bidder 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 (2) weeks immediately preceding a proposed placement at Upstate. It will be the Successful Bidder's responsibility to perform the test. All placements must then be tested by the Successful Bidder every six (6) months, for the duration of the placement. The Successful Bidder shall provide valid proof that each placement successfully passed the drug-testing requirement.

(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 Upstate in accordance with the Federal guidelines set forth by the Department of Health and Human Services (DHHS) and the Substance Abuse and Mental Health Services Administration (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. Background Checks.

(a) Prior to an individual's assignment to Upstate, the Successful Bidder 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 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, Successful Bidder shall provide Upstate with a copy of the report indicating that the individual is not so excluded. Failure to provide Upstate with a copy of the report indicating that the individual is not so

excluded may result in immediate termination of the Resulting Agreement. Providing Upstate with an individual that is so excluded may result in immediate termination of the Resulting Agreement.

(b) Prior to an individual's assignment to Upstate, the Successful Bidder 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 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 individual associated with the number, which shall then be used for the associated criminal records search.

(ii) A search shall be performed of all criminal records (felony and misdemeanor) for 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.

(c) With respect to any individuals assigned to Upstate continuously for a year or more, Successful Bidder shall re-perform the checks described in paragraph (a) and (b) of this Section at least once annually, and shall provide Upstate with a copy of the resulting reports upon request.

J. Employment Policies

In the event that Upstate's employment policies and procedures differ from those of the Successful Bidder, Upstate's policies and procedures shall take precedence over those of the Successful Bidder's. In order to promote and support the mission and values of SUNY Upstate Medical University, all members of Upstate's community are expected to maintain the highest level of professional behavior, ethics, integrity, and honesty, regardless of position or status. Temporary clinical staffing provided by the Successful Bidder will be required to sign a confidentiality clause prior to their employment at Upstate.

K. Record Keeping

Temporary clinical staffing provided by the Successful Bidder shall be required to complete and maintain attendance records in a format required by Upstate in addition to completing any attendance forms required for the Successful Bidder's own records and billing purposes. The Successful Bidder shall maintain and provide billing records and approved employee time sheets for auditing purposes.

Temporary clinical staffing provided by the Successful Bidder are required to use the attendance system in place at Upstate to record their attendance which will be used for all invoicing. The Successful Bidder's own timesheets are not acceptable.

L. Health Status of Successful Bidder's Employees

The Successful Bidder agrees that all temporary clinical staffing provided by the Successful Bidder to Upstate shall meet Upstate's current employee health requirements. It is required that contractors providing service personnel to Upstate ensure that these persons be in compliance with New York State Health Code, Section 405.3. This states that a physical examination and recorded medical history must be completed for all personnel to assure that no person shall assume his/her duties unless he/she is free from any health impairment that may pose a risk to patients or co-workers or which might interfere with the performance of required duties. This requires a physical examination be completed within one year or, if not within one year, Upstate's annual health (re)assessment must be done. All required information including immunization status and tuberculin skin (PPD) result must be documented on the Certificate of Health Statement, which will be provided by Upstate to the contracting agency. The completed form must be submitted to the Employee Health office for approval at least three days prior to the start date. The Successful Bidder agrees to comply with Upstate policy ESH T-01, "Travel/Contract Medical Personnel Health Clearance," included as Exhibit E of this document. For the temporary nursing positions listed in Exhibit B, temporary clinical staffing provided by the Successful Bidder will be required to have a physical done by Upstate's Employee Health to receive medical clearance and fitness for placement. The Successful Bidder will supply Employee Health with all required information, including immunization status, titers, PPD status and chest x-ray within six (6) months if candidate is PPD positive. If the temporary clinical staffing provided by the Successful Bidder do not have the appropriate documentation, Employee Health will provide them with necessary paperwork to obtain the tests at Upstate at the expense of the traveler.

All temporary clinical staffing provided by the Successful Bidder to Upstate are required to be vaccinated against influenza for the current influenza season prior to health clearance and at the beginning of each subsequent influenza 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 an individual's assignment.

M. Staff Certification and Licensure

Upstate retains the right to review and approve of temporary clinical staffing provided by the Successful Bidder assigned to Upstate. If applicable to the Services provided for under the Resulting Agreement, the Successful Bidder must provide evidence that such assigned personnel have: a valid license to practice professionally in New York State; certifications, qualifications and competencies documented; educational backgrounds, work history and references available; and documented completion of age specific competencies. Copies of the above must be available to Upstate. Assigned personnel must participate in Upstate mandated orientation programs.

The Successful Bidder is responsible for assuring that the temporary clinical staffing provided by the Successful Bidder are current with licensures and related certification as required. The Successful

Bidder is responsible for the cost of certification/re-certification of ACLS, BLS, CPR, PALS or any other certification(s) required of the employees provided to Upstate. BLS, ACLS and PALS require that an individual taking any of the courses complete both a written exam, as well as a skills demo portion. Temporary clinical staffing provided by the Successful Bidder must schedule all license, certification and renewal courses and exams on their time off.

N. Adequacy of Personnel

1. The Successful Bidder must agree that the temporary clinical staffing provided by the Successful Bidder and covered by any contract resulting from this IFB shall be performed by qualified, careful, and efficient staff that possess all necessary licenses and certifications to perform their duties.

2. If Upstate notifies the Successful Bidder that the temporary clinical staffing provided by the Successful Bidder to Upstate has been requested to leave Upstate premises due to incompetence, negligence, misconduct or behavior that Upstate has deemed inappropriate or unsatisfactory, the Successful Bidder will investigate any offenses or complaints promptly. Upon Upstate's request, the Successful Bidder shall remove said temporary clinical staffing and replace them should Upstate's needs warrant. Urgent requests by Upstate shall require the immediate attention of the Successful Bidder.

O. Non-Solicitation of Employees

During the term of any Resulting Agreement, neither Party will directly or indirectly solicit, hire, or utilize as an independent contractor the other party's employees or subcontractors involved in the performance of the Resulting Agreement. The foregoing provision will not (i) prohibit a general solicitation of employment in the ordinary course of business or prevent a party from employing any employee who contacts such party as a result of a general solicitation; or (ii) be read so as to limit employment opportunities to an extent that would not be permitted under applicable law.

P. Orientation

All temporary clinical staffing provided by the Successful Bidder shall complete mandatory New Employee Orientation ("NEO") in addition to any required classroom training at the Bill Rate. NEO may last up to two (2) days. If temporary clinical staffing provided by the Successful Bidder fail to complete NEO or if they complete NEO but do not subsequently report for work, Upstate shall not be obligated to pay the Successful Bidder for the employees' NEO time. If temporary clinical staffing are hired for more than one assignment, the individual will not be required to attend NEO again, but may be required to attend any required classroom training, if needed.

Q. Training/Qualifications

Minimum qualification requirements for all Upstate temporary medical personnel job titles are defined in Exhibit B. Successful Bidder must also provide pre-job training for their employees prior to assignment at Upstate. This training shall include, but not be limited to: introduction to safety measures and procedures; personal appearance, grooming and courtesy; and legal rights and responsibilities.

Section 7: GENERAL TERMS AND CONDITIONS

1. 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.

2. Notification of Errors, Inquiries and Interpretation

Bidder is responsible to bring to Upstate's attention any deviations in the technical specifications and to make recommendations for any additional requirements deemed necessary as standard, or for work indicated in the specifications contained in this IFB. If Upstate in its discretion finds the deviations to be significant so as to require a change in the necessary specifications for the work, Upstate will notify all Bidders in writing of the change in specifications. No deviations from the technical specifications provided herein shall be made without written approval of Upstate.

3. No Claims or Rights

By submitting a proposal, Bidder agrees that it will not make any claims for, or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.

4. Conflict of Interest

Bidder may be requested to provide evidence that the award of a contract will not result in (i) a conflict of interest with regard to other work performed by Bidder; or (ii) a potential conflict of interest among Bidder's staff.

5. Bidder's Terms and/or Conditions

Bidder's standard terms and conditions will **not** be considered relevant to its proposal or to the contract awarded and should not be included with its proposal. Any additional Bidder terms and conditions attached to or referenced in Bidder's proposal shall not be considered part of the proposal, but shall be deemed included for informational purposes only. No extraneous terms or conditions will be incorporated into the contract awarded unless approved in writing by Upstate's Office of General Counsel. Acceptance and/or processing of a Bidder's proposal shall not constitute acceptance of a Bidder's extraneous terms and conditions.

6. Acceptance of IFB Content

The terms and conditions included in this IFB as well as the applicable portions of Bidder's proposal shall become contractual obligations if a contract is awarded. **BIDDER'S FAILURE TO ACCEPT THESE TERMS AND CONDITIONS AND OBLIGATIONS SHALL RESULT IN REJECTION OF BIDDER'S PROPOSAL.**

7. Services Outside Scope of the Contract Awarded

Upstate shall not be responsible for any services provided by the Successful Bidder that are outside the scope of the contract awarded. Upstate shall not be responsible for any additional costs other than the costs for the services outlined herein, or for any work performed that has not been properly authorized in writing by Upstate.

8. Standard Contract Clauses

Any contract awarded resulting from this IFB shall include Exhibit A (State University of New York Standard Contract Clauses) and, for contracts in excess of \$25,000, Exhibit A-1 (State University of New York Affirmative Action Clauses). The provisions of Exhibit A and Exhibit A-1 shall take precedence over any provision in this IFB or any provisions in the contract awarded. Exhibits A and A-1 are attached to this IFB.

9. Binding Effect

The contract awarded shall be binding upon its execution by both parties and, if required by New York State law, upon the written approvals of the Attorney General and the Office of the State Comptroller.

10. Confidentiality/Freedom of Information Law

All proposals submitted for Upstate's consideration will be held in confidence and will become the property of Upstate. However, the resulting contract is subject to the New York State Freedom of Information Law (FOIL), contained in Article 6 of the New York State Public Officer's Law. Therefore, if a Bidder believes that any information in its proposal constitutes a trade secret, should be treated as confidential and should not be disclosed upon a request pursuant to FOIL, Bidder shall submit with its proposal a separate letter addressed to: *Michael Jurbala, CPA, AVP Internal Audit and Advisory Services, SUNY Upstate Medical University, 750 East Adams Street, Syracuse, NY 13210*, specifically (i) identifying the page number(s), line(s) or other appropriate designation(s) containing such information; (ii) explaining in detail why such information is a trade secret or confidential; and (iii) formally request that such information be held as confidential. Bidder's failure to submit such a letter with its proposal will constitute a waiver by the Bidder of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Bidder may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire proposal be kept confidential is not advisable, because a proposal cannot reasonably consist exclusively of proprietary information.

11. Minority and Women-owned Business Enterprises (M/WBE)

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.

For purposes of this solicitation, Upstate hereby establishes an overall goal of 30% for MWBE participation, 12% for Minority-Owned Business Enterprises (“MBE”) participation and 18% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). For additional information please refer to the MWBE requirements outlined in MWBE Prospective Bidder’s Notice (Form 7557-121).

Please note, the response forms identified in Form 7557-121 (SUNY MWBE Forms 104 & 107) must be submitted with all Bids. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: http://www.suny.edu/sunypp/documents.cfm?doc_id=611

The Successful Bidder 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. Successful 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 the stated goals. If Successful Bidder refuses to provide or fails to 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 an acceptable UP. The UP must be approved by Upstate before a contract can be executed. If there are no sub-contracting opportunities, then Tier II suppliers should be looked at by Bidder. Bidder is to factor in costs for any sub-contracted services into their pricing. Upstate will only pay amounts listed on Bidder’s Exhibit B-1 – Cost Worksheet. If Bidder is a Minority or a Women-Owned enterprise or both, they still need to meet the goals for either Minority or Women-Owned enterprises specified above.

Upstate has an M/WBE Coordinator on-site that can answer any questions a Bidder may have regarding the requirements. Please contact William Shepard at shepardw@upstate.edu for the Coordinator’s contact information. You may find NYS Certified M/WBEs at the following website: <https://ny.newycontracts.com/FrontEnd/VendorSearchPublic.asp>.

12. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder agrees with all of the terms and conditions of SUNY Exhibit A-1 including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid an EEO staffing plan (utilizing M/WBE form 108) to identify the anticipated work force to be utilized on the Contract. Forms are

available in SUNY Procurement Policies and Procedures Document 7557 online at: http://www.suny.edu/sunypp/documents.cfm?doc_id=611. If the Bidder is awarded a Contract, Bidder will, upon request, submit to Upstate, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

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

In addition, Bidder must submit with their bid or proposal their firm's Equal Employment Opportunity Policy Statement (which conforms to the provisions of Exhibit A-1) utilizing M/WBE Form 104. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: http://www.suny.edu/sunypp/documents.cfm?doc_id=611. Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

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

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

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

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its Contractors. SUNY therefore expects Bidders/Proposers/Contractors to provide maximum assistance to New York businesses in their use of the contract. The potential

participation by all kinds of New York businesses will deliver great value to New York State and its taxpayers.

Bidders/Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? (YES___ NO___)

If YES, identify New York State Business(es) that will be used. (Attach identifying information, e.g., contact information, dollar value of the subcontract or supply contract.)

14. Office of Federal Contract Compliance Programs

This Contractor and Subcontractor shall abide by the requirements of 41 C.F.R. §§ 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.

15. Governing Law

This IFB, Bidders' proposals and any resulting contract shall be governed, construed and enforced in accordance with the laws of the State of New York, excluding New York's choice of law principles in a New York court of competent jurisdiction. Bidder/Contractor agrees to submit itself to such court's jurisdiction.

16. 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:

NYS Empire State Development
Division for Small Business
625 Broadway
Albany, New York 12207
Phone: 1-800-782-8369
Email: esd@empire.state.ny.us
Website: <http://www.empire.state.ny.us>

17. Determination of Vendor Responsibility

New York State procurement law requires that state agencies award contracts only to responsible contractors. Additionally, the New York State Comptroller must be satisfied that a proposed contractor is responsible before approving a contract award under Section 112 of the State Finance Law. Section

163 of the New York State Finance Law (“SFL”) requires that contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible bidder.” Section 163 (9)f of the SFL requires that prior to making a contract award, each contracting agency shall make a determination of responsibility of the proposed contractor.

In accordance with these procurement laws, Upstate will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business. In doing so, bidders are required to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the VendRep System Instructions on the Office of State Comptroller (OSC) website, available at: www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Bidders opting to file a paper questionnaire may obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact Upstate’s designated contact listed above for a copy of the paper form.

In addition:

- a. *General Responsibility.* The Contractor shall at all times during the contract awarded term remain responsible. The Contractor agrees, if requested by the SUNY Chancellor 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.
- b. *Suspension of Work for Non-Responsibility.* The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under the contract awarded, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance of the contract awarded.
- c. *Termination for Non-Responsibility.* Upon written notice to the Contractor and a reasonable opportunity to be heard with appropriate SUNY officials or staff, the contract awarded may be terminated by the SUNY Chancellor or his or her designee at the Contractor’s expense, where the Contractor is determined by the SUNY Chancellor or his or her designee to be non-responsible. In such event, the SUNY Chancellor or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

18. Requirements of New York State’s Recycling Program

In accordance with the provisions of Section 165(3) of the State Finance Law and Executive Order No. 142, Upstate is required to purchase recycled products, if available, made with recycled content in accordance with rules and regulations established by the State Department of Environmental

Conservation in development of that agency's Recycling Emblems Program. If the cost of a recycled product does not exceed by 10% the cost of a product made without recycled content (or by 15% if over 50% of the recycled materials are generated from the New York State waste stream), the recycled product must be purchased.

19. State Consultant Services Reporting

New York State Finance Law ("NYSFL") Sections 8 and 163 require that Contractors annually report certain employment information to the contracting agency, the Department of Civil Service and Office of the State Comptroller. State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

Successful Bidder shall comply with Section 163(4)(g) of the 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 **Exhibit X**) and (ii) the Contractor's Annual Employment Report – Form B (see **Exhibit Y**), for each such contract. Instructions on completing these forms are attached as **Exhibit W**. 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. Successful Bidder 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.

20. Electronic Payment Authorization

Contractor shall provide complete and accurate billing invoices to Upstate in order to receive payment for its services. Billing invoices submitted to Upstate must contain all information and supporting documentation required by Upstate and the Office of State Comptroller (OSC). Payment for invoices submitted by Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by Upstate's Senior Vice President for Administration or designee, in her/his 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 OSC procedures to authorize payments. Authorization forms are available at the OSC website at www.osc.state.ny.us/epay, by email at epunit@osc.state.ny.us or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this

contract if it does not comply with the OSC's electronic payment procedures, except where Upstate's Senior Vice President for Administration or designee has expressly authorized payment by paper check as set forth above.

21. Timeliness of Payment and Interest

Interest for late payment shall be governed by Section 179-g of New York State Finance Law.

22. Exhibits

The following documents will be incorporated into, and made part of, the contract awarded:

- a. Exhibit A, State University of New York Standard Contract Clauses
- b. Exhibit A-1, State University of New York Affirmative Action Clauses (for contracts valued at greater than \$25,000)
- c. Exhibit Z, SUNY Business Associate Agreement
- d. The Agreement
- e. This Invitation for Bid, including all attachments and exhibits
- e. Bidder's response

In the event of any inconsistency in or conflict among the document elements described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth above.

23. Independent Contractor

The Successful Bidder (Contractor) and its agents or employees or any entity or person acting on behalf of the Contractor engaged in the performance of work shall at all times be deemed to be performing as independent contractors. The Contractor hereby covenants and agrees to act in accordance with that status. The Contractor and its agents or employees or any entity or person acting on behalf of the Contractor shall neither hold themselves out as, nor claim to be, officers or employees of Upstate and shall make no claim for, nor be entitled to, Workers' Compensation coverage, medical and unemployment benefits, social security, or retirement membership benefits from Upstate.

24. Subcontracting

In the event the Successful Bidder (Contractor) uses partners, subcontracts or subcontractors, the Contractor will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this IFB. For the Resulting Agreement, the Successful Bidder will be the prime contractor. Any and all invoices for work performed by a subcontractor shall be submitted to the Successful Bidder, not to Upstate. Successful Bidder shall then invoice Upstate for payment of the work performed by the subcontractor.

Upstate's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the contract. The Contractor shall be solely responsible to Upstate for the acts, omissions or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. No provisions of the awarded contract shall create or be construed as creating any contractual relation between Upstate and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work. Contractor shall check requirements of the work and coordinate and adjust as required so that conflicts in time, work space, equipment and supplies do not occur in the work being performed by the Contractor with its own employees and the work being performed by its subcontractors.

No subcontractor shall be permitted to work until it has furnished satisfactory evidence to Upstate of the insurance required by law.

The Successful Bidder (Contractor) shall execute a written agreement with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors a written agreement which shall bind each to the terms and provisions of the prime contract awarded, insofar as such terms and provisions are applicable to the work to be performed by such subcontractors. The Contractor shall require all subcontractors and sub-subcontractors to promptly, upon request, file with Upstate a copy of such agreements upon request, from which the price and terms of payment may be deleted.

25. Compliance

- a. Contractor shall comply with all laws, rules, orders, regulations, and requirements of federal, state and municipal governments applicable hereto, including the provisions of Exhibit A, State University of New York Standard Contract Clauses, attached hereto and made a part hereof, and for agreements with a value of \$25,000 or more Exhibit A-1, State University of New York Affirmative Action Clauses, attached hereto and made a part hereof.
- b. 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, 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.
- c. 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.

- d. 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.

26. Indemnification

a. Successful Bidder (Contractor)

The Successful Bidder (Contractor) shall be responsible to and shall fully defend, indemnify, and hold harmless the State of New York and the State University of New York and their respective officers, trustees, directors, agents and employees without limitation, from any and all losses, expenses, damages and liabilities, including reasonable attorneys' fees, arising out of the intentional or negligent acts or omissions of the Contractor, its officers, employees, agents or licensees in any performance under this Agreement including: i) personal injury, damage to real or personal tangible property; ii) negligence, either active or passive; and iii) infringement of any law or of a United States Letter Patent, with respect to Products and Services furnished under this Agreement, or of any copyright, trademark, trade secret or intellectual proprietary rights, provided that Upstate shall give Contractor: (a) prompt written notice of any action, claim, or threat of infringement suit, or other suit, promptness of which, shall be established by Upstate upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (c) assistance in the defense of any such action is at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, Upstate may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as Upstate shall require. New York State reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest.

b. Upstate

Subject to the availability of lawful appropriations (pursuant to Section 41 of the New York State Finance Law) and consistent with Section 8 of the New York State Court of Claims Act, Upstate will hold the 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 a Resulting Agreement.

27. Liability

The Successful Bidder (Contractor) understands and agrees that it is responsible for the performance of the Services in accordance with the terms and conditions of the awarded Contract. Upstate may look solely to the Contractor for remedy, redress, liability or indemnification for any failure to perform, whether caused by Contractor itself or by one or more of its officers, employees, subcontractors, agents, licensees, licensors or affiliates or any person or entity acting on behalf of Contractor in providing the Services. The Contractor shall be fully liable for the actions of its officers, employees, subcontractors, agents, licensees, licensors, or affiliates or any person or entity acting on its behalf in providing the Services and shall fully indemnify and save harmless Upstate, SUNY and the State of New York from suits, actions, damages and costs of every name and description presented, brought, or recovered against Upstate, SUNY and the State of New York for, or on account of any liability which may be incurred by reason of the Contractor's performance of the Resulting Agreement.

The Contractor will be responsible for the work, direction and compensation of any person or entity it engages as an officer, expert, employee, consultant, agent, independent contractor, or subcontractor. Nothing in the contract awarded or the performance thereof by the Contractor will impose any liability or duty whatsoever on Upstate including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.

28. Insurance

During the term of the awarded contract, the Successful Bidder (Contractor) must obtain and maintain insurance coverage at its own expense as provided in this paragraph, and shall deliver Certificates of Insurance in a form satisfactory to Upstate before commencing any work under this contract. Certificates should reference the Contract Number. Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Certificates shall be mailed to: **SUNY Upstate Medical University, Contracts Office, SLC #2050, 750 East Adams St., Syracuse, NY 13210.**

The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the state of New York ("admitted" carriers) with an A.M. Best company rating of "A-" or better. 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 **SUNY Upstate Medical University, Contracts Office, SLC #2050, 750 East Adams St., Syracuse, NY 13210.**

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 successful bidder's work under the awarded contract, or as a result of the Successful Bidder's activities. Any other insurance maintained by Upstate shall be excess of and shall not contribute with the Successful Bidder's insurance, regardless of any "other insurance" clause contained in any Upstate policy of insurance.

At least two weeks prior to the expiration of any policy required by the awarded contract, evidence of renewal or replacement of policies of insurance with terms no less favorable to Upstate than the

expiring policies shall be delivered to Upstate in the manner required for service of Notice under the contract.

- a. Throughout the term of any Resulting Agreement, the Contractor will ensure that professional liability and employer’s liability insurance policies are provided for all individuals providing services under the Resulting Agreement at the Contractor’s sole cost and expense with limits of liability in the minimum amounts of \$1,000,000/\$3,000,000. In the event the Contractor procures a “claims made” policy as distinguished from an “occurrence” policy, the Contractor shall procure and maintain prior to termination of such insurance at the Contractor’s sole cost and expense, “tail” coverage to continue and extend coverage complying with this Agreement after the end of the “claims made” policy. The Contractor shall provide evidence of such insurance coverage to Upstate within fifteen (15) calendar days upon request.
- b. Workers Compensation and Disability Benefits Coverage for the life of the Resulting Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board.
- c. **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 it has 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 Bidder 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 Bidder 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.ny.gov); (Reference applicable IFB/RFP and Group #s on the form.)

2. Certificate of Workers' Compensation Insurance:
 - a. Form C-105.2 (9/07) if coverage is provided by the Bidder's insurance carrier, Bidder 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, Bidder 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 Bidder'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, a Bidder 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 Bidder 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.ny.gov); (Reference applicable IFB/RFP and Group #s on the form.)
2. Form DB-120.1, Certificate of Disability Benefits Insurance. Bidder must request its business insurance carrier to send this form to Upstate; or
3. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Bidder 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, 750 East Adams Street, Syracuse, NY 13210 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

29. Travel

In the event the Contractor is required to be reimbursed for travel, reimbursement rates shall not exceed the current NYS Schedule of Allowable Reimbursable Travel Expenses, available from the New York State Comptroller at: <https://www.osc.state.ny.us/agencies/travel/travel.htm>.

30. Termination

The Contract awarded to the Successful Bidder (Contractor) may be terminated by Upstate for any of the following reasons:

- a. *Convenience of Upstate:* The contract may be terminated at any time upon receipt of thirty (30) days prior written notice given by Upstate for whatever reason.
- b. *Event of default:* The contract may be terminated in the event of breach of any of its provisions by the Contractor, or if the Contractor's Services are deemed unsatisfactory in Upstate's sole discretion, due to Contractor's fault or negligence, or that of its officers, employees, subcontractors, agents, licensees, licensors, or affiliates. In such event, Upstate will send a written cure notice in accordance with the Notice provisions of the contract, and Contractor shall have thirty (30) days to correct the deficiencies noted. If the deficiencies are not corrected, Upstate may terminate this contract immediately upon written notice.
- c. *Deficient Certifications:* If the awarded contract has a value greater than \$15,000, Upstate shall have the right to terminate in the event the State Finance Law sections 139-j and 139-k certifications executed by the Contractor are found to be false or incomplete. If the contract has a value of greater than \$100,000 and Contractor's sales for the immediately preceding four quarters were greater than \$300,000, or if the contract has a value of \$125,000 or greater, Upstate shall have the right to terminate in the event the Successful Bidder's Department of Taxation and Finance Contractor Certification form, ST 220-CA, statements are found to be false or incomplete.
- d. *Lack of Funds:* If for any reason the State of New York terminates or reduces its appropriations to Upstate, the awarded contract may be terminated or reduced at Upstate's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to Upstate for payment of such costs. In any event, no liability shall be incurred by the State (including Upstate) beyond monies available for the purposes of the awarded contract.
- e. Upstate may terminate the awarded contract, upon written notice, in the event of any of the following: (1) Contractor makes an assignment for the benefit of creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against Contractor and is not dismissed within thirty (30) days from the date of filing; or (iii) all or substantially all of Contractor's property is levied upon or sold in any judicial proceeding.

31. Procurement Lobbying Act – State Finance Law §§ 139-j and 139-k

Prior to approval of the contract for which this IFB has been issued by Upstate, or if applicable, the Office of the State Comptroller, a Bidder shall not communicate with Upstate other than with the persons identified in this IFB as Designated Contacts or with a person who the Designated Contacts has advised the Bidder in writing is also a Designated Contact. Generally, the New York State Finance Law restricts communications between a bidder or a person acting on behalf of a Bidder, including its lobbyist, to communications with the officers and employees of the procuring agency designated in

each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact.

Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. Upstate's procurement record must demonstrate compliance with these requirements. Upstate will make a record of all Contacts, and such records of Contact will become part of the procurement record for this IFB. A determination that a Bidder or a person acting on behalf of a Bidder has intentionally made a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k, is likely to result in denial of the award of contract under this IFB. Additional sanctions may apply. A complete copy of SUNY's Procurement Lobbying Policy and Procedure is available for review at http://www.suny.edu/sunypp/documents.cfm?doc_id=430

Each Bidder shall submit with its proposal a written affirmation of its understanding of SUNY's procurement lobbying procedures and agreement to comply with such procedures. The requisite form is provided as Attachment 2. It may also be accessed online at: http://www.suny.edu/sunypp/documents.cfm?doc_id=282

32. Restrictions on the Activities of Current and Former State Officers and Employees

All Bidders and Bidder employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State.

Contractors and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth the New York State Public Officers Law §§ 73 and 74, and the underlying principle of law is to prevent conflicts of interest and encourage ethical behavior. The law may be found on the website of the New York State Joint Commission on Public Ethics at: http://www.jcope.ny.gov/about/laws_regulations.html.

33. Diesel Emissions Reduction Act of 2006

The Successful Bidder (Contractor) certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used by Contractor, its agents or subcontractors under the contract awarded, will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of Best Available Retrofit Technology ("BART") and Ultra Low Sulfur Fuel ("ULSD"), unless specifically waived by DEC. Qualification for a waiver under this law will be the responsibility of Contractor. Annually, but no later than March 1st, Contractor shall complete and submit directly to

Upstate, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and Contractors Annual Report forms available at the Department of Environmental Conservation (“DEC”) website: <http://www.dec.ny.gov/chemical/4754.html>, for heavy duty vehicles used in the performance of the contract awarded for the preceding calendar year. The Contractor shall certify to Upstate, and submit with each application for payment, Contractor and Subcontractor Certification forms, which state that the Contractor will comply with the provisions of ECL Section 19.0323.

34. Smoke Free Upstate

The Upstate campus is smoke free. No smoking is permitted within the buildings or upon the grounds owned or leased by Upstate. The Successful Bidder must communicate this policy to its employees, subcontractors, and any other individuals assigned to enter upon Upstate grounds and premises in connection with the services to be performed in connection with the contract awarded.

35. Bill Rates

Bill Rates, once established by the bidding process, will not be changed during the first year of any Resulting Agreement. In subsequent years, Successful Bidder or Upstate may request a rate change (increase or decrease) once annually based on fluctuations in the latest published copy of the unadjusted Consumer Price Index for All Urban Consumers (CPI-U) of All Items in the Northeast Region. Price adjustments will require approval of Upstate and the New York State Comptroller. Requests for a rate increase by the Successful Bidder must have explicit written justification and supporting documentation from Successful Bidder and must be submitted to Upstate at least ninety (90) days prior to implementation of such changes. Increases to rates will be limited to the lesser of 3% or the difference in the unadjusted Consumer Price Index for All Urban Consumers (CPI-U) of All Items in the Northeast Region for the twelve (12) months prior to ninety (90) days from the contract anniversary date. For example, if the contract anniversary date is May 1, 2018, Successful Bidder would need to notify Upstate by February 1, 2018 of its desire for a rate increase. The rate increase would be based upon the February 2018 CPI-U data. Should Successful Bidder fail to make a request and submit supporting documentation to Upstate within the ninety (90) days, the Successful Bidder shall be deemed to have waived its right to any increase in price for that year, but Upstate shall not be barred from making the appropriate adjustment in the case of when a decrease in the CPI occurs. If there is a decrease in the CPI, Upstate would automatically receive the benefit of it.

36. Payment Terms

In order to receive payment for services rendered, Contractor shall provide Upstate with complete and accurate billing invoices along with timesheets generated from Upstate’s electronic time and attendance system. Temporary clinical staffing provided by the Successful Bidder shall be required to complete and maintain attendance records in a format required by Upstate in addition to completing any attendance forms required for the Successful Bidder’s own records and billing purposes. The Successful Bidder shall maintain and provide billing records and approved employee time sheets for auditing purposes.

Temporary clinical staffing provided by the Successful Bidder are required to use the attendance system in place at Upstate to record their attendance, which will be used for all invoicing. The Successful Bidder's own timesheets are not acceptable.

Payments under any Resulting Agreement shall be made to the Successful Bidder only for hours worked by clinical staff provided to Upstate. **Titles billed will be the titles listed in Exhibit B.** Invoices submitted to Upstate must contain all information and supporting documentation required by the Resulting Agreement, Upstate, and the New York State Comptroller. Invoices must include the contract number, employee name, department where employee is assigned at Upstate, department(s) where time was worked by employee, employee title, hourly Bill Rate, and hours worked. Invoices must list each employee on a separate page. Also refer to Section 6(K).

Note that the hourly Bill Rate is based on the confirmation rate at the start of each assignment. For example, if an ICU nurse is deployed to a Med/Surg unit during a shift, the ICU rate would remain in effect for the entire assignment. Or, if a Med/Surg nurse is deployed to an ICU unit during a shift, the Med/Surg rate would remain in effect for the entire assignment. The Bill Rate does not fluctuate based on the unit to which the individual was deployed.

Successful Bidder must submit invoices for services provided to Upstate on a bi-weekly basis to coincide with Upstate's pay period, which begins on Thursday and runs through Wednesday. Invoices from subcontractors shall be consolidated into one invoice and forwarded by Successful Bidder to Upstate's Accounts Payable Department for payment. All payments for services rendered by Successful Bidder, its affiliates and any subcontractors shall be paid directly to Successful Bidder. No payments shall be made by Upstate to any other party or subcontractor directly.

Any and all invoices for amounts payable by Upstate shall be sent to:

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

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 Senior 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 Senior 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.

37. Overtime and Holiday Pay

There will be no payment for time not worked. Overtime and Holiday time worked will be paid to the Successful Bidder at the regular Bill Rate. The Successful Bidder shall ensure that the temporary clinical staffing it provides to Upstate will be paid Overtime and Holiday time in accordance with state and federal law.

38. On-Call; Re-Call

On-call shifts for some temporary clinical staffing may be required by Upstate. On-call is defined as availability to work, if necessary. It occurs outside, and in addition to, the workers' regular work schedule. The temporary clinical staffing provided by the Successful Bidder may be required to provide on-call coverage. The on-call rate shall be 10% of the title's Bill Rate. Temporary clinical staffing are expected to report to work within forty-five (45) minutes from the time of the call. The minimum hours invoiced when temporary clinical staffing is recalled/called back to work while in an "On-Call" status will be in accordance with Upstate's current practice. Upstate's current practice is that the minimum hours to be invoiced when called back is four (4) hours. On-call pay will not be paid for hours while the temporary clinical staff is on Re-call pay. The minimum hours to be invoiced while temporary clinical staff is on re-call is 4 hours.

39. Taxes

Contractor will pay all salaries and expenses of its Temp(s), as well as all Federal Social Security taxes, Federal and State unemployment taxes, and any similar taxes relating to such employment.

40. Sales and Compensating use Tax Documentation

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.

The web links to obtain these Contractor certification forms are provided below. 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 with their 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 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: <https://www.tax.ny.gov/>.

Upstate reserves the right to terminate any Resulting Agreement in the event it is found that the certification filed by Successful 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 the Successful Bidder.

Complete one (1) original copy of the New York State Department of Taxation and Finance ("NYS DTF") Form ST-220-CA and return with your proposal. Document must be sworn and notarized. The form can be found at: https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Complete one (1) original copy of the NYSDTF Form ST-220-TD and return to the Department of Taxation and Finance. Document must be sworn and notarized. The form can be found at: https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf.

41. Excluded Individuals/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 this Agreement (collectively "Exclusions/Adverse Actions"). If, at any time during the term of this 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 to immediately terminating this 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 this of this Agreement. See Department of Health and Human Services Office of the Inspector General (www.oig.hhs.gov), System for Award Management (www.SAM.gov), and New York State Medicaid Disqualified Provider List (www.omig.state.ny.us). Contractor and any of its affiliates shall be responsible to and shall indemnify and hold harmless Upstate, SUNY, 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 provided or is providing services, indirect or direct, to Upstate. Contractor shall reimburse, within thirty (30) days, Upstate, SUNY, 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.

42. False Claims

Upstate 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. **Attachment 6** of this IFB satisfies this notification requirement, and by signing the False Claims Acknowledgement Form that is part of **Attachment 6**, the Bidder acknowledges that it has received and understands the information provided therein.

43. HIPAA

Bidder understands and agrees that its 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. Any Resulting Agreement shall be subject to the SUNY Business Associate Agreement which is attached to this IFB as Exhibit Z and made an integral part hereof.

State University of New York

Notary Acknowledgement

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

Contract No.:

STATE OF: _____)
COUNTY OF: _____) ss.

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

[CHECK ONE]

___ (If an Individual): he/she executed the foregoing instrument in his/her name and on his/her own behalf.

___ (If a Corporation): he/she is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

___ (If a Partnership): he/she is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he/she is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

___ (If a limited liability company): he/she is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that, he/she is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration Number: _____ State of: _____

THIS PAGE MUST BE SIGNED IN THE ORIGINAL AND MUST ACCOMPANY EACH COPY OF YOUR BID.

Attachment 1: Bid Submission Checklist

√	Description
<input type="checkbox"/>	IFB (page 6) Summary Information Form
<input type="checkbox"/>	Notary Acknowledgement Form
<input type="checkbox"/>	Attachment 1: Bid Submission Checklist
<input type="checkbox"/>	Cover letter indicating that IFB instructions and project specifications are understood and ability to meet and comply with all project specifications.
<input type="checkbox"/>	Addressed all points and questions in IFB in the order that they appear. (Section 3: Proposal Requirements)
<input type="checkbox"/>	Exhibit B-1: Cost Worksheet
<input type="checkbox"/>	Attachment 2: Procurement Lobbying Act Certification
<input type="checkbox"/>	Attachment 3: Non-Collusive Bidding Certification
<input type="checkbox"/>	Attachment 4: Vendor Reference Form
<input type="checkbox"/>	Attachment 5: Public Officer's Law Form
<input type="checkbox"/>	Attachment 6: False Claims Acknowledgement Form
<input type="checkbox"/>	Tax Certification ST-220-CA
<input type="checkbox"/>	<p>Vendor Responsibility:</p> <p>File either the required Vendor Responsibility Questionnaire online via the New York State VendRep System or complete and submit a paper questionnaire.</p> <p>Select one:</p> <p><input type="checkbox"/> completed online questionnaire.</p> <p><input type="checkbox"/> paper copy of questionnaire included in Bid.</p>
<input type="checkbox"/>	MWBE Form 104: Equal Opportunity Policy Statement
<input type="checkbox"/>	MWBE Form 107: Utilization Form
<input type="checkbox"/>	MWBE Form 108: EEO Staffing Plan

Attachment 2: Procurement Lobbying Act Certification

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

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

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

The University's Procedures are available at: http://www.suny.info/policies/groups/public/documents/policies/pub_suny_pp_039630.htm

Please complete the following:

1. As defined in State Finance Law §§ 139-j (1)(a), has a governmental agency made a determination of non-responsibility with respect to the Offeror within the previous four years where such a finding was due to a violation of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO YES If yes, attach explanation

2. Has a governmental entity terminated or withheld a procurement contract with the Offeror because of violations of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO YES If yes, attach explanation

CERTIFICATION:

By signing below the Bidder affirms and certifies that it: (1) has reviewed and understands the Policy and Procedure of Upstate, related to SFL §§ 139-j and 139-k, (2) agrees to comply with Upstate's procedure relating to Contacts with respect to this procurement, and (3) has provided information that is complete, true, and accurate with respect to SFL §§ 139-j and 139-k. Bidder understands that Upstate reserves the right to terminate any resulting contract in the event it is found that the certification filed by the Bidder in accordance State Finance Law §§139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, Upstate may exercise its termination right by providing written notification to the Bidder in accordance with the written notification terms of the contract.

Firms Name and Address:	
FEIN #:	
Telephone Number: (____)____-____	
Fax Number: (____)____-____	
Email Address:	
Bidder's Name and Title:	
Bidder's Signature:	
Date:	

Attachment 3: Non-Collusive Bidding Certification

By Submission Of This Bid, Bidder And Each Person Signing On Behalf Of Bidder Certifies, And In The Case Of Joint Bid, Each Party Thereto Certifies As To Its Own Organization, Under Penalty Of Perjury, That To The Best Of His/Her Knowledge And Belief:

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A Bid Shall Not Be Considered For Award Nor Shall Any Award Be Made Where [1], [2], [3] Above Have Not Been Complied With; Provided However, That If In Any Case The Bidder(S) Cannot Make The Foregoing Certification, The Bidder Shall So State And Shall Furnish Below A Signed Statement Which Sets Forth In Detail The Reasons Therefore:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of _____, this _____ day of _____, 20_____ as the act and deed of said corporation of partnership.

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:
NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE**

_____	_____
_____	_____
_____	_____
_____	_____

**IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:
NAME LEGAL RESIDENCE**

President:

Secretary:

Treasurer:

President:

Secretary:

Treasurer

Identifying Data

Potential Contractor	
Address	
Telephone	
Name of Responsible Corporate Officer	
Title of Responsible Corporate Officer	
Signature:	

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____

By _____

Name:

Name:

Title:

Title:

Address:

Address:

Attachment 4: Vendor Reference Form

References:

References					
	Company Name:	Address:	Contact Name, email address, Phone #:	Length of time as your customer:	Type of Service Provided:
1.					
2.					
3					
4					
5					
6					
7					

**Attachment 5: State University of New York
Public Officers Law Form**

Inquiry to determine compliance with the provisions of Public Officers Law §73(4).

The conflict of interest and code of ethics provisions of New York State Public Officers Law §§73 and 74 apply to all purchasing activities of SUNY Upstate Medical University and University Hospital at Community General (collectively “Upstate”). Upstate is required to inquire if any member of a business entity is an officer or employee of the State of New York, or of a public benefit corporation of the State of New York.

Please indicate if you or any officer of your organization, or any party owning or controlling more than 10 percent of your stock if you are a corporation, or any member if you are a firm or association, is an officer or employee of the State of New York or of a public benefit corporation of the State of New York.

Yes

No

Organization: _____

Signature

Date

Name: _____

Title: _____

Attachment 6: False Claims Act

Information for Contractors and Agents of the State University of New York Upstate Medical University

Federal and State false claims laws are important in detecting fraud, waste and abuse in health care programs. 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 following:

1. Federal False Claims Act
2. New York State laws regarding civil or criminal penalties for false claims and payments
3. Administrative remedies for false claims and statements
4. Whistleblower protections under these laws

This information should be provided to all employees in your organization who:

1. Have contact in any way with SUNY Upstate Medical University (University Hospital) contracts
2. Provide health care items or services to SUNY Upstate Medical University (University Hospital)
3. Perform billing or coding functions
4. Are otherwise involved with SUNY Upstate Medical University (University Hospital)

FEDERAL FALSE CLAIMS ACT

The Federal False Claims Act allows a civil action to be brought against a person or entity who:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to any federal employee;
- Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved;
- Conspires to defraud the government by getting a false or fraudulent claim allowed or paid; or
- Knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay the government.

Under the Federal False Claims Act, a “claim” is any request or demand for money or property if the Federal government provides any portion of the money or property in question. This includes requests or demands submitted to a contractor of the Federal government, including but not limited to Medicaid and Medicare claims.

The Federal False Claims Act broadly defines the terms “knowing” and “knowingly”. Specifically, knowledge will have been proven for purposes of the Federal False Claims Act if the person or entity:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

The Federal False Claims Act provides that a specific intent to defraud is not required in order to prove the law has been violated.

A federal false claims action may be brought about by the United States Attorney via the United States Department of Justice (DOJ) or an individual may file a qui tam action on behalf of the government for

violations of the Federal False Claim Act. The government may decide to intervene with the individual's lawsuit, in which case, the U.S. Department of Justice will direct the prosecution. If the government does not intervene, the individual may still continue to pursue the lawsuit. If the qui tam lawsuit is successful, the individual may receive between 10 – 30% of the recovery, depending upon, among other things, the level of government participation. Reasonable attorney fees and other costs may also be covered. However, any person who brings about a clearly frivolous case can be held liable for the defendant's attorney fees and costs.

A person or entity found guilty of violating the Federal False Claims Act will be obligated to repay all falsely obtained reimbursement and will be liable for a civil penalty between \$5,500 - \$11,000, plus up to three times the amount of damages incurred by the government for each violation of the Act. Additionally, the United States Department of Health and Human Services (DHHS) of the Office of the Inspector General (OIG) may exclude the violator from participation in federal health care programs, such as Medicaid and Medicare.

Under the Federal False Claims Act, an action may be brought up to 6 (six) years after the date of the violation or 3 (three) years after the date when material facts with respect to the violation are known or should have been known by the government, however, no later than 10 (ten) years after the date on which the violation was committed.

Federal law prohibits an employer from discriminating against an employee in the terms and conditions of his/her employment because the employee initiated or otherwise assisted in a false claims action. The employee is entitled to all relief necessary to make the employee whole with remedies including: reinstatement with comparable seniority as the employee would have had except for the discrimination; two times the amount of any back pay plus interest; and compensation for reasonable damages sustained as a result of such discrimination, including litigation costs and reasonable attorney fees.

FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT

The Federal Program Fraud Civil Remedies Act establishes an administrative remedy against any person who makes, presents or submits, or causes to be made, presented or submitted a claim for property, services or money to certain federal agencies, including the DHHS, that the person or entity "knows or has reason to know" is:

- False, fictitious or fraudulent;
- Includes or is supported by any written statement which asserts a material fact that is false, fictitious or fraudulent;
- Includes or is supported by any written statement which omits a material fact, is false, fictitious or fraudulent because of the omission and is a statement which the person or entity has a duty to include as a material fact; (or)
- Is for the provision of items or services which the person or entity has not provided as claimed.

Additionally, it is illegal to make, present or submit, or cause to be made, presented or submitted any written statement with respect to a claim or to obtain the approval or payment of a claim if the person or entity "knows or has reason to know" such statement:

- Asserts a material fact which is false, fictitious or fraudulent (or)
- Omits a material fact which makes the statement false, fictitious or fraudulent.

Similar to the Federal False Claims Act, a person who "knows or has reason to know" is defined as one who:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; (or)
- Acts in reckless disregard of the truth or falsity of the information.

The law specifically provides that a specific intent to defraud is not required to prove a violation.

A violation of the Federal Program Fraud Civil Remedies Act can result in a civil monetary penalty up to \$5,000 per false claim and, in certain circumstances, an assessment of twice the amount of any false claim. Additionally, under certain circumstances, a penalty of \$5,000 per false statement may be imposed.

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

NEW YORK STATE FALSE CLAIMS ACT

The New York State False Claims Act allows a civil action to be brought against a person or entity who:

- Knowingly presents or causes to be presented, a false or fraudulent claim for payment or approval to any New York State or local government employee;
- Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved;
- Conspires to defraud New York State or a local government by getting a false or fraudulent claim allowed or paid;
- Has possession, custody or control of property or money used or to be used by New York State or a local government and, intending to defraud New York State or a local government or willfully to conceal the property or money, delivers less property or money than the amount for which the person receives a receipt;
- Is authorized to make or deliver a receipt for property used or to be used by New York State or a local government and intending to defraud New York State or a local government makes or delivers a receipt without completely knowing the information on the receipt is true;
- Knowingly buys or receives as a pledge public property from an officer or employee of New York State or a local government knowing that the officer or employee may not lawfully sell or pledge such property; (or)
- Knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to New York State or a local government.

Under the New York State False Claims Act, a “claim” is any request or demand for money or property which is made to New York State or a local government or to any contractor, grantee or other recipient if New York State or a local government provides any portion of the money or property in question.

The terms “knowing” and “knowingly” are defined as that under the Federal False Claims Act. New York State law, like Federal law, provides that a specific intent to defraud is not required in order to prove the law has been violated. New York State law excludes acts arising out of mistake or mere negligence.

The New York State Attorney General has authority to investigate claims and to bring action on behalf of New York State or a local government. A local government may also investigate claims and bring action on its behalf. The Attorney General must consult with the Office of Medicaid Inspector General before bringing a claim related to the Medicaid program.

An individual may file a qui tam action on behalf of the New York State or local government for violations of the New York State False Claim Act. In a qui tam action, an individual must file his/her complaint and written disclosure of substantially all material evidence and information s/he possesses in New York State Supreme Court, where it will remain under seal for at least 60 (sixty) days. New York State may decide to intervene or to authorize a local government to intervene with the lawsuit. If neither New York State nor a local government intervenes, the individual may still continue the lawsuit independently. If a qui tam lawsuit is successful, the individual may receive between 15 – 30% of the recovery, depending upon, among other things, the level of the State's or local government's participation. Reasonable attorney fees and other costs may also be covered. The individual's share may be reduced to no more than 10% if the Court finds the action was based primarily on disclosure of specific information not provided by the individual relating to allegations or transactions in a criminal, civil or administrative hearing. An individual's share of any recovery may also be reduced if the individual planned or initiated the violation in question. If an individual is convicted of criminal conduct arising from his/her role in the violation, s/he is not entitled to any portion of the recovery.

No action may be filed against the Federal government, the State or a local government or any officer or employee thereof acting in his/her official capacity.

A person or entity found guilty of violating the New York State False Claims Act is obligated to repay all the falsely obtained reimbursement and will be liable for a civil penalty between \$6,000 - \$12,000, plus up to three times the amount of damages incurred by New York State or a local government for each violation of the Act. If the person committing the violation furnished information regarding such violation to the appropriate New York State or local government official within 30 (thirty) days of obtaining such information and cooperated fully in the investigation, additional damages are capped at twice the amount.

The time periods for bringing a claim under the New York State False Claims Act are the same as under the Federal False Claims Act.

The New York State False Claims Act prohibits an employer from discriminating against an employee in the terms and conditions of his/her employment because the employee initiated or otherwise assisted in a false claims action. The employee is entitled to all relief necessary to make the employee whole with remedies including: reinstatement with comparable seniority as the employee would have had except for the discrimination; two times the amount of any back pay plus interest; and compensation for reasonable damages sustained as a result of such discrimination, including litigation costs and reasonable attorney fees.

OTHER NEW YORK STATE LAWS

Various other New York State laws also prohibit false claims. Certain relevant portions of the New York State Code are as follows:

New York Social Services Law 145-b

It is unlawful for a person or entity to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain or attempt to obtain

payments under the New York State Medicaid program. For violations of this law, the local social services district or New York State has the right to recover civil damages equal to three times the amount by which any figure is falsely overstated. In the case of non-monetary false statements, the local social service district or New York State may recover three times the damages or \$5000, whichever is greater, for damages sustained by the government due to the violation.

A “statement or representation” includes a claim for payment, an acknowledgement, certification or report of data which serves as a basis for a claim or rate of payment.

The New York Social Services Law also empowers the New York State Department of Health to impose a monetary penalty on any person or entity that, among other actions, causes Medicaid payments to be made if the person or entity knew or had reason to know that the:

- Payment involved care, services or supplies that were medically improper, unnecessary or excessive;
- Care, services or supplies were not provided as claimed;
- Person who ordered or prescribed the improper, unnecessary or excessive care, services, or supplies was suspended or excluded from the Medicaid program at the time of the care, services or supplies were furnished; (or)
- Services or supplies were not in fact provided.

The monetary penalty cannot exceed \$2000 for each item or service determined to be inappropriate, unless a penalty under the section has been imposed within the previous 5 (five) years, in which case the penalty cannot exceed \$7,500 per item or service.

New York Social Services Law 366-b(2)

Any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, knowingly submits false information for the purpose of obtaining compensation greater than that which s/he is legally entitled for furnishing services or merchandise or knowingly submits false information for the purposes of obtaining authorization for furnishing services or merchandise shall be guilty of a class A misdemeanor. If such an act constitutes a violation of a provision of the penal law of the State of New York, the person committing the act will be punished in accordance with the penalties fixed by such law.

New York Penal Law Article 155

A person, who with intent to deprive another of his property obtains, takes or withholds such property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud or other similar behavior is guilty of larceny. Larceny is a felony with the applicable class being based on the value of the property involved.

New York Penal Law Article 175

Four crimes are specified which relate to filing false information or claims.

Under 175.05 it is a Class A misdemeanor to falsify business records, including entering false information, omitting material information or altering an enterprise’s business records with the intent to defraud.

Under 175.10 falsifying business records as provided in 175.05 with the intent to commit another crime or conceal its commission is a Class E felony.

Under 175.30 it is a Class A misdemeanor to present a written instrument, including a claim for payment, to a public office knowing that it contains false information.

Under 175.35 it is a Class E felony to submit a claim as provided in 175.30 with the intent to defraud New York State or a political subdivision.

New York Penal Law Article 176

This article applies to intentional filing of a health insurance claim knowing that it is false. Violation of this law is either a misdemeanor or felony, with the applicable class being based on the value of the claim involved.

New York Penal Law 177

This law establishes the crime of “health care fraud”. A person commits such a crime when, with the intent to defraud Medicaid or other health plans, including non-government plans, s/he knowingly and willfully provided materially false information or omits material information for the purpose of requesting payment for a health care item of service and as a result of the false information or omission, s/he or another person receives a payment in an amount to which s/he or such other person is not entitled. Health care fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime; the higher the payments received in a one year period, the more severe the punishments, which currently range up to 25 (twenty-five) years if more than \$1 million in improper payments are involved.

New York Labor Law 740

New York law affords protections to employees who may notice and report inappropriate activities. An employer may not take any retaliatory action against an employee because the employee:

- Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety or which constitutes health care fraud;
- Provides information to, or testifies before any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; (or)
- Objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

In order to be protected when disclosing information to a public body, an employee must first bring the alleged violation to the attention of a supervisor of the employer and give the employer a reasonable opportunity to correct the allegedly unlawful practice. The law allows employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation; reinstatement, back-pay and compensation of reasonable costs. If the court finds that a health care employer’s retaliatory action was in bad faith, it may impose a civil penalty up to \$10,000 on the employer. The

law also provides employees who bring an action without basis in law or fact may be held liable to the employer for its attorney's fees and costs.

New York Labor Law 741

Under certain circumstances, New York law provides additional protections to employees of health care service providers, which include the Hospital. A health care service provider may not take any retaliatory action against an employee because the employee:

- Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care; (or)
- Objects to or refuses to participate in any such activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

In order to claim this protection, the employee must first bring the issue to the attention of a supervisor of the employer and give the employer a reasonable opportunity to correct the allegedly improper activity or practice. However, this is not required and an employee may disclose an alleged improper quality of patient care to a public body or interest, if the alleged improper quality of healthcare presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

SUNY Upstate Medical University (University Hospital) Policies

In addition to Federal and New York State law, University Hospital has policies and procedures regarding the detection and prevention of fraud, waste and abuse. This includes the Institutional Compliance Code of Conduct and the "Prevention of False Claims" policy. Copies of these policies are available upon request.

PREVENTION OF FALSE CLAIMS

If you observe something that is not right, University Hospital encourages you to report your concern for further investigation to the University Hospital Institutional Compliance Office for Hospital Affairs by:

1. Calling 315-464-4343 to speak with the Institutional Compliance Officer
2. Faxing information to the Institutional Compliance Office at 315-464-4342
3. Writing to the Institutional Compliance Officer for Hospital Affairs, 750 East Adams Street, Syracuse, New York, 13210
4. If you are not comfortable reporting your concern directly, you may utilize the anonymous Institutional Compliance Office hotline number at 315-464-6444.
5. While you are encouraged to report your concerns to the University Hospital Institutional Compliance Office for Hospital Affairs, this is not required and you may report possible false claims act violations to the federal Department of Justice.

FALSE CLAIMS ACKNOWLEDGMENT FORM

Contractor Affirmation with respect to Federal and State false claims laws.

Procurement Description: Temporary Clinical Staffing Services

IFB #: S-1166

Contracting Agency: SUNY Upstate Medical University

“Contractor affirms that it has reviewed and understands the document entitled *“Information for Contractors and Agents of the State University of New York Upstate Medical University”*, which provides information related to Federal and State false claims laws, including SUNY Upstate Medical University’s Compliance Program.

Name of Contractor: _____

Address: _____

Person Submitting Form on behalf of Contractor:

Signature _____

Name: _____

Title: _____

EXHIBIT A: State University of New York Standard Contract Clauses
After this page

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

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

2. PROHIBITION AGAINST ASSIGNMENT

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

3. COMPTROLLER'S APPROVAL.

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

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

under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. WORKERS' COMPENSATION BENEFITS.

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

5. NON-DISCRIMINATION REQUIREMENTS.

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

6. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the

filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION.

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

8. INTERNATIONAL BOYCOTT PROHIBITION.

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

9. SET-OFF RIGHTS.

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

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an exami-

nation, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement

in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992.

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

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

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

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

NYS Department of Economic Development

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

email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS

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

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

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

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

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

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract,

the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

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

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

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

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

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

EXHIBIT A-1: State University of New York Affirmative Action Clauses
After this page

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

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

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is

undertaken or assumed by a business enterprise not controlled by the prime contractor.

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

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract

may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

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

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

of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

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

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

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the

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

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report (“Workforce Report”)

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

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

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

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and

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

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

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

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

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

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

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

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

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN.

The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

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

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

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

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

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through

distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

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

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

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

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

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority-

and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

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

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

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

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

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

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

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

6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107).

Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program

Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and

- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
- ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

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

7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

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

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

8. Quarterly MWBE Contractor Compliance Report.

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

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

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

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

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University

is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of twelve percent (12%) for Certified Minority-Owned Business Enterprises and eighteen percent (18%) for Certified Women-Owned Business Enterprises.

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

or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

EXHIBIT B – JOB TITLES

Title: **Certified Nursing Assistant (CNA)**

Qualifications: Current New York State certification. Able to be certified/re-certified in CPR. One year of patient care experience. Must successfully pass pre-employment health clearance.

Duties: Demonstrates excellent communication skills, ability to work well in teams, and exhibits patient focus. Performs direct and indirect nursing care activities (assist with simple procedures, initiates CPR, assists with admitting, transfer and discharge process); demonstrates knowledge of normal growth and development; responds to changing patient needs (works collaboratively with all members of the health care team); participates in team spirit and unit morale concerns (acts as a preceptor for new CT); problem-solves; maintains a safe work environment; participates in quality improvement; communicates effectively with members of the health care team; maintains positive public relations; obtains/record/exchange/convey information for the patient; takes an active role in personal/professional development; and makes decisions by ethical principles.

Title: **Licensed Practical Nurse (LPN)**

Qualifications: Current New York State license; able to be certified/re-certified in CPR. Minimum of 1 (one) year of experience required. Prior experience in an inpatient setting preferred. Must possess excellent interpersonal and communication skill. Demonstrates effective interpersonal communication skills with patients, family members and other members of the health care team. .

Duties: Able to perform majority of patient care functions needed in an acute care setting with minimal orientation and supervision. Greet patients, direct to exam rooms, prepare for exam. Routine assistance during exams: set up trays for injections, measure and record progress of patients, take and record vital signs. Assist with general office duties, reception, appointment scheduling, filing and chart preparation. Contact various insurance companies to obtain authorizations for physical therapy, MR's, CT's, surgery, etc. Contact primary care physicians to obtain referrals on new patients or extensions of referrals on current patients. Assist physicians in patient care. Maintain exam rooms and all clinical areas. Administer injections and assist with paps and other procedures. Experience using Electronic Medical Records strongly desired. Implements nursing care activities under the direction of the primary or associate nurse as outlined in the nursing care plan. Observes and reports patient responses to treatments. Participates in activities related to nursing unit management.

Title: Mental Health Therapy Aide

Qualifications: Experience working with the psychiatric patient population within the last 2 years preferred. Excellent verbal and written communication and organizational skills are necessary as well as some knowledge of medical terminology. Must successfully pass pre-employment health clearance.

Duties: Will provide both direct and indirect patient care. Duties include: take and record vital signs, complete patient admission documentation, assist with appropriate physical examination of patients, collect specimens, monitor patient intake/output, transport patients, orient new patients to unit regulations and daily routine, assist patient in the completion of hygiene needs, advise nursing staff of patient data in a timely and accurate manner, develop therapeutic relationships under nursing supervision and interact therapeutically with patients during activities, intervene on behalf of the patient during crisis situations, maintain a safe environment for patients, attend to ADL's as needed, apply clinical and psychological interventions based on age appropriateness and developmental stage, perform safety checks on assigned shift.

Title: Nurse Practitioner

Qualifications: Minimum of one (1) year experience. Prior experience in an inpatient setting strongly preferred. Must be NYS licensed/registered NP (NYS NP specialty area of certification must be consistent with practice) or NYS licensed/registered or NCCPA certified or eligible Physician Assistant required, Possession of Medicare NPI# or eligibility to apply for same required. CPR and ACLS certification is required. Must possess excellent interpersonal and communication skills. Must successfully pass pre-employment health clearance.

Duties: Will work in collaboration with the attending physician and will provide comprehensive health assessments and develop a plan of care for the patient population. Will also document in the medical record by recording subjective, objective data, assessment and plan records data in a consistent, legible, accurate, concise and timely manner. Will provide patient/family education and utilize prescriptive authority working in collaboration with the attending physician. Able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision.

Title: OB Technician

Qualifications: Associate's degree in a health-related field or an equivalent combination of education and direct patient care experience required. Knowledge and understanding of aseptic technique and good communications skills required. OB Tech, OR Tech or Operating Room protocol experience strongly preferred. Must successfully pass pre-employment health clearance.

Duties: Observes and reports symptoms, reactions and changes of labor and delivery patient to the primary nurse. Sets up delivery rooms for delivery using aseptic technique. Assists families and visitors by giving support and appropriate information. Takes and records vital signs. Assumes responsibility for primary scrub person for emergent and elective or routine C-sections or other surgical procedures performed within the department. Requires the ability to set up and maintain a sterile environment. Assists patients with routine ADL's.

Title: **Physician Assistant**

Qualifications: NYS licensed/registered and NCCPA certified (or eligible) Physician Assistant required. Must have NPI number and be Medicare enrolled with a Medicare Identification Number (or PTAN) or eligible for Medicare Enrollment within 6 months of hire. CPR Certification required. Must possess excellent interpersonal and communication skills. Must successfully pass pre-employment health clearance.

Duties: Responsibilities to include: First Assist duties, comprehensive assessment and evaluation of patients requiring acute and follow up care, as well as, initiating treatment modalities and participating in patient management, performing and/or ordering selected surgical procedures, tests, and exams for diagnostic purposes, facilitating discharges via participation in multi-disciplinary rounds, and collaborating with numerous disciplines and multi-disciplinary team members.

Title: **Registered Nurse – Ambulatory, Case Manager/Utilization Review/CDI (Clinical Documentation Improvement), Certified Nurse Anesthetist, Critical Care (Adult and Pediatric), Pediatrics, Step Down, Radiology, PACU, ICU Float, Emergency Department (Adult, Pediatric, Triage and Minor Treatment), Labor and Delivery, Med/Surg (Non-Telemetry, including Rehabilitation and Transitional Care Unit), Med/Surg (Telemetry), Med/Surg Float, Operating Room (Adult or Pediatric), Cardiac Cath, Procedural Areas, Post Partum, Psych.**

Qualifications: Current New York State Registration. Certified in BLS and able to be recertified. Minimum of 1.5 years recent experience (within past 2 years) in an acute care facility of similar size and level as Hospital. Travelers will only be considered if experienced in hospitals of equal or greater size or trauma centers. Experience with an EPIC Electronic Medical Records preferred. Must possess excellent interpersonal and communication skills. Must not have had professional license or certification suspended or investigated. Must not have been named as a defendant in a professional liability claim. Must have verification of legal right to work in U.S. Must successfully pass pre-employment health clearance. All candidates are subject to drug screening and criminal background check as described in this Agreement.

Duties: Able to perform majority of patient care skills, good nursing assessment in the level of acute care setting in the specialty with minimal orientation and supervision.
 Certification/experience required where applicable depending on the specialty includes but may not be limited to:

- ACLS
- NNLS and EFM
- PALS
- TNCC
- ENPC
- Telemetry experience
- Triage experience
- Ambulatory/Primary Care experience
- Medical coding/insurance review

Title: Safety Companion (1:1 Observation)

Qualifications: Able to be certified/re-certified in CPR. Some basic patient care expected such as ambulation, toileting, skin care and mouth care as needed. Demonstrates excellent communication skills, ability to well in teams and exhibits patient focus. Must successfully pass pre-employment health clearance.

Duties: Provides constant observation of patients in need of safety watch, including those patients on suicide watch and those that are confused, agitated and/or at high risk for falls and injury to self. Some basic patient care expected such as ambulation, toileting, skin care and mouth care as needed.

Title: Surgical/Operating Room Tech (Adult or Pediatric)

Qualifications: Current in BLS and able to be recertified. Minimal of 3 years recent experience (within past 4 years) in operating room in an acute care facility of similar or same level as Upstate (Level 1 trauma center/or teaching hospital), or in an equivalent size facility in the specialty area (adults or peds). Scrub experience is required. Operating room experience should be in general surgery and specialty areas i.e., ortho, neurosurgery, trauma, vascular, ENT, bariatric, GU, GYN. No First Assist in New York State. First time travelers will only be considered if experienced in hospitals of equal size. Must possess excellent interpersonal and communication skills. Must not have had professional license or certification suspended or investigated. Must successfully pass pre-employment health clearance.

Duties: Able to perform general skills, in the level of acute care setting in the specialty with minimal orientation and supervision.

Title: Anesthesia Technologist

Qualifications: Graduate of an approved accreditation program or Anesthesia Technology. National ASATT certification as an Anesthesia Technologist. Must have CPR/BLS certification before entering work site. Preference of three years of work experience. Must be knowledgeable about reprocessing methods, aseptic and sterile techniques and can apply to setting up and assisting with sterile trays. Experience working in Level 1 trauma center preferred. Must successfully pass pre-employment health clearance.

Duties: Responsible for working all locations where general anesthesia is provided. Must be able to perform room turns, prepare rooms for cases including invasive procedures, troubleshooting different makes and models of anesthesia machines, assist with invasive procedures, arterial lines, CVC placement and thermo dilution catheter placement. Knowledge of infection control practices as it relates to anesthesiology equipment and supplies. Will order supplies, restock rooms and carts as directed.

Title: Echo Technician

Qualifications: Must have must have six months of full-time paid experience in the operation of an EKG machine within the last three years OR successful completion of a course in the operation of an EKG machine within the last three years. Experience with terminology and EKG rhythms is required. Must successfully pass pre-employment health clearance.

Duties: Responsible for processing EKG's for patient care. Transcribe, edit and distribute EKG's to patient care areas for inclusion in medical record. Will need to be able to scan, process and distribute Holter Monitor tests results to the Cardiologist for review and then edit for inclusion in patient medical record. Will provide quality control feedback to the floors performing EKG's.

Title: EEG Technician

Qualifications: Registered EEG T, one year of EEG experience, BLS/CPR certified. Advanced computer, communication and critical thinking skills. Must successfully pass pre-employment health clearance.

Job Duties: Will perform routing EEG's in accordance with established ASET guidelines on patients ranging from neo-natal to geriatric in outpatient and inpatient setting. Enters raw data and prepares data for physician review, measures and applies electrodes for adult and pediatric patients; descriptive analysis of EEG waveforms and patterns observed. Appropriate patient/family interaction. Editing of 24 hour data. Maintains equipment, stocks acquisition stations, reports malfunctions, and records in equipment log book. Follows existing hospital/department policy and procedures.

Title: Laboratory Technician – Clinical Lab Technologist

Qualifications: NYS licensed/eligible or permit to practice as a Clinical Laboratory Technologist required. Ability to distinguish colors required. Two year of clinical laboratory experience preferred. Must successfully pass pre-employment health clearance.

Duties: Duties include, but are not limited to: enter and retrieve patient data, test requests, quality control data and instrument performance data utilizing laboratory computer. Process patient specimens following established protocol, including reference lab specimens and needed paperwork, in a timely manner. Perform daily maintenance and minor troubleshooting on laboratory instrumentation as needed, recording any work done in the appropriate log books. Perform patient specimen analysis following all established protocols regarding quality control and methods of analysis while observing health and safety regulations. Must be able to complete multiple tasks in a timely and accurate manner and maintain patient confidentiality.

Title: Laboratory Technician - Histotechnologist

Qualifications: NYS License/registration or limited permit to practice as a certified Histological Technician or Clinical Laboratory Technologist and two years of histology or clinical laboratory experience required. Ability to distinguish colors required. Must successfully pass pre-employment health clearance.

Job Duties: Possess and utilize technical skills in the histology and special procedures laboratory and assist in insuring histology clinical and research laboratory testing is performed in a timely and accurate fashion. Possess and utilize sectioning and staining skills in the histology laboratory. Perform special stains, immunohistochemical stains and enzyme histochemistry. Perform more sophisticated histology procedures such as special stains, immunostains, eye pathology, neuropathology, enzyme preparation, nerve biopsies, renal biopsies and muscle biopsies. Assist in ensuring Histology laboratory testing is performed in a timely and accurate fashion. Perform appropriate computer data entry of Surgical Pathology and research specimens; responsible for maintaining current specimen computer records. Perform appropriate computer entry of billing information. Observe and contribute to laboratory safety at all times. Must maintain patient confidentiality.

Title: Laboratory Technician - Phlebotomist

Qualifications: High school diploma or equivalent required; one year of related phlebotomy experience strongly preferred; basic understanding of medical laboratory technology desired. Excellent customer service skills, good manual dexterity, and ability to satisfactorily and efficiently complete daily blood draws and maintain patient confidentiality required. Must successfully pass pre-employment health clearance.

Duties: Duties include, but are not limited to: Venipuncture & microsampling blood collection for adults and children as requested; perform bleeding times, sweat chlorides and glucose tolerance tests. Will be required to keep work area clean and adequately stocked; order supplies as necessary from general store and/or outside accounts; greet patients, enter patient demographics and test requests into Laboratory Information System; answer telephone requests from physician offices and provide patient results to appropriate health care providers. Will also deliver specimens and process patient specimens for analysis, as required.

Title: Occupational Therapist 2

Qualifications: B.S. (or higher) in Occupational Therapy, NYS licensure or eligible and 2 year of experience required. Must successfully pass pre-employment health clearance.

Duties: Administer Occupational Therapy as prescribed by a physician; determine specific goals for patient treatment through evaluation and consultation with health care professionals, patients & families; process record keeping & related reports; attend designated clinics, rounds and conferences rendering patient information; interact with patient families; maintain equipment and supplies; may participate in educational programs for staff.

Title: Occupational Therapy Assistant – Certified (COTA)

Qualifications: Associates degree as an Occupational Therapy Assistant, NYS C.O.T.A. certification and registration, and 2 years clinical experience (preferably in an Acute care) required. Must successfully pass pre-employment health clearance.

Duties: Will assist OTR in the evaluation of patients; assess ADL skills; assist in treatment planning; monitor responses to treatment and modify treatment with collaboration of OTR, attend designated clinics, rounds and conferences and render patient information and complete appropriate documentation.

Title: Pharmacist

Qualifications: B.S. in Pharmacy or PharmD., NYS licensed; previous hospital Pharmacy experience desirable. Must possess excellent interpersonal and communication skills. Must successfully pass pre-employment health clearance.

Duties: Interprets medication orders and prescriptions to ensure that they are complete, safe, rational, and compatible with institutional policy. Prepares compounds and dispenses medications for inpatient and ambulatory care use. This includes the preparation of injectable sterile products. Dispenses Pharmacy related items. Performs duties in all areas of Pharmacy to include inpatient, ambulatory care and satellites. Provides information to health care practitioners to promote the rational use of medications. Provides drug monitoring service. Maintains Pharmacy records by law and institutional policy. Interprets policy and procedures for hospital staff. Participates in teaching programs for hospital staff. Participates in Pharmacy Departments Quality Assurance Programs. Able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision.

Title: Pharmacy Technician

Qualifications: Interested candidates must have a high school diploma, or a high school equivalency diploma issued by an appropriate educational authority. You must also have six months of experience assisting with the filling of medical prescriptions under the direct supervision of a licensed Pharmacist. The required six months of experience may be substituted by possession of a Pharmacy Technician Certification accredited by the Pharmacy Technician Certification Board (PTCB) or a certificate of diploma from a pharmacy technician training program accredited by the American Society of Health-Systems Pharmacists. Must possess working knowledge of acceptable methods and practices used in receiving, storing, and issuing pharmaceutical supplies. Must be able to understand and carry out both oral and written instructions and be able to bend, lift, climb, stoop, and kneel. Must successfully pass pre-employment health clearance.

Duties: Duties include, but are not limited to: Will fill unit dose carts, prepare IV admixtures, and answer/screen telephone calls for pharmacists. Will screen orders from nursing units. Will direct drug orders to pharmacist, fill orders for IV sets and solutions, toiletries and food supplies. Will deliver pharmaceuticals to nursing units. Will replenish and charge for ward stock items. Will restock pharmacy dispensing areas, obtain and organize supplies for pharmacist compounding, and repackage bulk supplies. Will maintain and clean equipment used in Pharmacy and will perform light housekeeping.

Title: Physical Therapist

Qualifications: B.S. in Physical Therapy, NYS License or eligible, and 2 years experience required. Must successfully pass pre-employment health clearance.

Duties: Will evaluate plans and implement programs in accordance with indicated procedures; formulate specific goals for patient treatment by appropriately collaborating with other health care personnel and the patients; prepare and maintain notes and discharge records in a timely manner; attend designated clinics, rounds, and conferences, and render patient information; participate in educational programs for staff members, students, volunteers, and other professional health care personnel; train new staff members; serve as clinical instructor for senior level students; and facilitate new program development.

Title: Physical Therapist Assistant

Qualifications: A.A.S. degree in Physical Therapist Assistant. NYS license or eligible and 2 years experience required. Must successfully pass pre-employment health clearance.

Duties: Provide physical therapy under the direction of a physical therapist with the guidelines of the profession. Prepare and maintain notes in a timely manner. Attend designated clinics, rounds and conferences and render patient information. Participate in educational programs for staff members, students, volunteers and other professional health care personnel.

Title: Radiation Therapist

Qualifications: AAS or AMA certified program, RRT license with three to five years related experience, and NYS license. Must successfully pass pre-employment health clearance.

Duties: Responsible for the delivery of radiation therapy to patients as prescribed and under the regulations of the National Cancer Institute. Incumbents must have in-depth knowledge of high-voltage, state-of-the-art radiation therapy equipment with safety standards and to properly maintain same. Coordinates patient appointments; interprets prescription and delivers radiation to patient in accordance with physician's instructions; prepares and operates all types of radiotherapy equipment, (i.e. Co-60, Linear Accelerator, Simulator, etc.); takes radiographic film to confirm treatment volume; performs pre-treatment duties by operating the Simulator, for localization of tumor size and position, taking the contour and collecting all physical factors for the treatment plan, taking photographs of patients for portal verification; assuming responsibility for providing all safety measures for patients, recognizing all types of radiation reactions and for providing proper care and instructions to patients; assumes responsibility for compliance to departmental and regulatory policies and procedures; recording and maintaining treatment records and port films; participates in the department's in-service and educational programs, and coordinates departmental and in-patient activities to provide proper patient care.

Title: Radiologic Technologist - Diagnostic

Qualifications: A.A.S. in Radiologic Technology or equivalent, NYS license/registration, plus one year experience as a radiologic technologist required. Must successfully pass pre-employment health clearance.

Duties: The radiologic technologist is responsible for performing radiographic examinations under the direction of departmental radiologists. The technologist will greet the patient, explain to them the examination they are about to undergo, position the patient, set the proper exposure factors in order to obtain the required quality radiograph. The technologist will also practice appropriate radiation safety and protection to assure that patients do not undergo undue radiation exposure. Technologist will also have a sufficient knowledge base to operate imaging equipment efficiently and effectively in order to obtain quality studies and to report any malfunctions with equipment to immediate supervisor. They will also be responsible for processing films, inputting information into the Radiology Information System for documentation and billing purposes. This position will also be responsible for the proper use of imaging equipment and following department procedures and protocol as defined in the Policy and Procedure Manual. This position is mainly responsible for providing radiologic examinations based on referring physician and radiologist needs.

Title: Radiologic Technologist - CT/MRI

Qualifications: A.A.S. in Radiologic Technology or equivalent, NYS license/registration, plus one year CT/MRI experience as a radiologic technologist required. Must successfully pass pre-employment health clearance.

Duties: The radiologic technologist is responsible for performing radiographic examinations under the direction of departmental radiologists. The technologist will greet the patient, explain to them the examination they are about to undergo, position the patient, set the proper exposure factors in order to obtain the required quality radiograph. The technologist will also practice appropriate radiation safety and protection to assure that patients do not undergo undue radiation exposure. Technologist will also have a sufficient knowledge base to operate imaging equipment efficiently and effectively in order to obtain quality studies and to report any malfunctions with equipment to immediate supervisor. They will also be responsible for processing films, inputting information into the Radiology Information System for documentation and billing purposes. This position will also be responsible for the proper use of imaging equipment and following department procedures and protocol as defined in the Policy and Procedure Manual. This position is mainly responsible for providing radiologic examinations based on referring physician and radiologist needs.

Title: Radiologic Technologist – Interventional

Qualifications: A.A.S. in Radiologic Technology or equivalent, NYS license/registration, plus one year experience as an Interventional radiologic technologist required. Must successfully pass pre-employment health clearance.

Duties: The radiologic technologist is responsible for performing radiographic examinations under the direction of departmental radiologists. The technologist will greet the patient, explain to them the examination they are about to undergo, position the patient, set the proper exposure factors in order to obtain the required quality radiograph. The technologist will also practice appropriate radiation safety and protection to assure that patients do not undergo undue radiation exposure. Technologist will also have a sufficient knowledge base to operate imaging equipment efficiently and effectively in order to obtain quality studies and to report any malfunctions with equipment to immediate supervisor. They will also be responsible for processing films, inputting information into the Radiology Information System for documentation and billing purposes. This position will also be responsible for the proper use of imaging equipment and following department procedures and protocol as defined in the Policy and Procedure Manual. This position is mainly responsible for providing radiologic examinations based on referring physician and radiologist needs.

Title: Respiratory Therapist

Qualifications: A.A.S. in Respiratory Therapy, NYS license/registration as a Respiratory Therapist, and 2 years post A.A.S. degree clinical acute care experience required. Must possess excellent interpersonal and communication skills. Must successfully pass pre-employment health clearance.

Duties: Will administer positive pressure and aerosol therapy to patients; institute and monitor oxygen therapy on patients; assist physicians in instituting and maintaining continuous ventilation; administer cardio-pulmonary resuscitation; perform pulmonary function tests; perform radial arterial punctures. Able to perform majority of patient care functions needed in the acute care setting with minimal orientation and supervision.

Title: Sonographer – Ultrasound/Vascular Technologist

Qualifications: Graduate of ultrasound program accredited by the Council for Higher Education(CHEA), United States Department of Education (USDOE), that specifically conducts program accreditation in diagnostic medical sonography. RDMS certification in Abdominal and OB/Gyn plus one year experience required. Must successfully pass pre-employment health clearance.

Duties: Responsible for independent operation of sonographic equipment, and for performing and communicating results of diagnostic examinations using sonography. Responsible for daily operations of the sonographic laboratory, patient schedule, daily equipment maintenance and Q/A. Be able to use independent judgment during the sonographic exam to accurately differentiate between normal and pathologic findings. Obtain appropriate medical history and communicate findings to radiologist.

Title: Speech Language Pathologist

Qualifications: Master's Degree in Speech Pathology, NYS licensure, clinical certification in Speech Pathology (or its equivalent) and completion of clinical fellowship year required. Must successfully pass pre-employment health clearance.

Duties: Will administer evaluations, diagnose speech, language, cognition, communication, and swallowing disorders; establish and provide treatment programs for individuals with deficits in speech, language, cognitive, voice and/or swallowing disorders; schedules patients to receive evaluation and treatments based on patient needs; provide education to patients, families and staff regarding disorders of speech, language, cognition, voice and/or swallowing; participate in program development for the speech therapy discipline, PM&R department and Service Line; prepare reports and communicate with referral sources and treatment agencies; participate in community programs.

EXHIBIT B-1 - COST WORKSHEET

**REQUEST EXCEL SPREADSHEET TO COMPLETE IF YOU
ARE BIDDING ON THIS OPPORTUNITY**

REQUEST SHOULD BE MADE TO William Shepard at: shepardw@upstate.edu

EXHIBIT D: Vendor Access

After this page

Policy Number: **V-12**

Issue Date: 11/2004

Values: *Respect People, Serve our Community, Value Integrity*

Approved by: Management Forum

Applies to: Downtown & Community

Page(s): 1 of 11

Vendor Access

<i>Review Date:</i>	<i>Change Description:</i>
06/2016	
<i>Revised Date:</i>	<i>Change Description:</i>
06/2016	<i>Added link for SYMPLR vendor credentialing system & updated verbiage under I. General Information</i>

Policy: Upstate University Hospital Downtown Campus and Upstate University Hospital Community Campus, collectively “Upstate”, faculty, and staff interacting with vendors shall adhere to the guidelines set forth in this policy, regardless of clinical setting. This policy shall ensure reasonable access for, and identification of, vendors visiting Upstate. This policy shall minimize interruption to patient care and staff productivity; improve the security of patients, staff and property; ensure that vendor contacts and relationships support the service, teaching, and research missions of Upstate, and maintain the highest ethical and professional vendor relations.

I. GENERAL INFORMATION

"University Hospital is prohibited from contracting with any individual or organization which has been convicted of a criminal offense related to health care or who is listed by the Office of Inspector General as debarred, excluded, or otherwise ineligible for participation in federal health programs. All vendors will be screened against the Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE) at <https://exclusions.oig.hhs.gov>, the Office of Medicaid Inspector General (OMIG) List of Restricted and Excluded Providers at www.omig.ny.gov/search-exclusions, and the System for Award Management (SAM) at www.sam.gov. Upstate University Hospital employees must not disclose current product pricing or usage to vendors. This information is confidential."

II. VENDOR CATEGORY DEFINITIONS

A. Sales Representatives (Category 1 Vendors):

Sales call, product introduction, and inservice offering and/or product evaluation. Any vendor visit that pertains to soliciting new products, equipment, or services requires an appointment with a specific staff member. Staff members must be cognizant of the reporting requirements of New York State’s Project Sunlight.

B. Contracted Services and Maintenance (Category 2 Vendors):

Frequent or long-term visits for equipment inspection/operation, repairs/maintenance, construction, and troubleshooting or technical support, are requested and scheduled by a department.

- C. Daily Delivery/Pickup/Transport (Category 3 Vendors):
All vendors or vendor representatives, who provide daily or frequent delivery/pick up within the institution, i.e.: office supply vendor, courier services, patient transport.
- D. Ongoing Required Vendor/Agency Service (Category 4 Vendors):
1. Patient Service Representatives are vendor/agency/staff members who come to the hospital to provide patients with education about services or equipment use after discharge and/or conduct concurrent and/or retrospective medical record reviews. This type of service may include insurance company representatives (or their contracted agents), external/home health care representatives, or those who provide, or wish to provide, services for patients.
 2. Vendor or agency representatives who provide consulting work or services. These vendors may include technical support, inventory management, and delivery and set up of specialty products (i.e., beds). Some vendors in this category will receive department-specific vendor orientation, e.g., IMT consulting vendors, prime vendor, etc.

III. VENDOR RESPONSIBILITIES:

- A. All Category 1 vendors and their representatives must register with SYMPLR (previously VCS) at www.symplr.com
- B. Whenever possible, the use of cellular phones should be limited to non-patient care areas, such as individual offices, administrative spaces, waiting rooms, corridors, lobbies, conference rooms, and the cafeteria. Cellular Phone use is addressed in University-Wide Policy [UW C-07](#), Cellular Phones, Headphones and Earbuds.
- C. All vendors must wear an Upstate-issued visitor badge during their entire visit to Upstate, which clearly identifies the vendor and the representative.
- D. Vendors in Categories 2, 3, and 4 on premises to provide service to Upstate may not use their scheduled time in the institution for other activities, including, but not limited to, detailing, soliciting, or visiting.
- E. All vendors shall park in visitor-identified lots. (This excludes patient transportation and daily delivery/pickup categories.)

IV. PROCEDURES FOR EACH VENDOR CATEGORY

- A. CATEGORY 1 - SALES REPRESENTATIVES:
 1. Upstate Department Responsibility
 - a. Any employee scheduling an appointment with vendors in Category 1 MUST pre-approve the representative(s) in advance, using the SYMPLR internet program on the Hospital's website. Educational or inservice programs being presented or supported by vendor representatives must have the prior approval of the department sponsoring the presentation and are subject to the same requirements as all other appointments. Vendors not in the database are not eligible for pre-approval and must be directed to Hospital Purchasing, 5793 Widewaters Parkway, Dewitt NY 13214. All vendors must be SYMPLR compliant. Vendors who do not have a pre-approved appointment will be denied access to all Upstate locations.

- b. To ensure appropriate documentation, the Department must provide the following information for an appointment in the SYMPLR system:
 - 1. The name of the Upstate employee the appointment is with
 - 2. The name of the vendor representative and his/her company
 - 3. The exact date, time, and location (room #) of the visit
- 2. Vendor Responsibility
 - a. “Cold calls” are not allowed.
 - b. On the day of the visit, the vendor representative reports to a SYMPLR kiosk and obtains a vendor visitor badge, which includes the name of the representative, company represented, time/date of appointment, and the place of the appointment. The badge must be worn at all times while in the Hospital, on Campus, or at Community campus.
 - c. During the sign-in process, the representative must have current SYMPLR credentials.
 - d. For representatives without current SYMPLR credentials, the representative may be provided access through Passage Point at the discretion of the department.

B. CATEGORY 2 - CONTRACTED SERVICES AND MAINTENANCE:

- 1. Upstate Department Responsibility

These vendors may be issued a non-employee badge/ID, as determined by the department and Hospital Purchasing; these vendors shall deal directly with Hospital departments for scheduled maintenance/repair. **HOWEVER**, if a repair is an emergency repair after normal business hours, or a repair that, for some other reason, must be scheduled after normal business hours, the department **MUST** call University Police with information about the visit.

Required information:

 - a. Vendor responding for maintenance/repair and the name of the responder, if known
 - b. The location the vendor will be responding to
 - c. Name, phone number, and Department calling University Police
 - d. Whether a department representative will be present during the response; if yes, the name of the person who will be present, and how they can be reached when the vendor arrives.
 - e. In **RARE** instances when a department representative cannot be present when the vendor arrives, the department must be sure that University Police has access to the area. If University Police has keys for the area, the area can be unlocked for the vendor and re-secured when the vendor leaves, but University Police **CANNOT** “stand by” while the vendor works.

2. Vendor Responsibility

Vendors in this category will schedule all visits with department requesting the service. If the visit is during normal business hours (M-F, 8 a.m. – 4 p.m.), the vendor must report to the department scheduling the service before beginning work. **HOWEVER**, if the visit is for work to be performed after normal business hours, the vendor **MUST** sign in with University Police.

C. CATEGORY 3 - DAILY DELIVERY/PICKUP/TRANSPORT:**1. Upstate Department Responsibility**

a. These vendors provide daily or frequent delivery/pickup within the institution during normal business hours. These vendors will be required to display a non-employee badge/ID or a visitor badge. The non-employee badge/ID is issued at the discretion of individual departments. In lieu of a non-employee badge/ID, these vendors must obtain a visitor badge by reporting to the Information Desk in the lobby of Upstate University Hospital or the Security Office at Community Campus.

b. The only **EXCEPTION** is if a delivery/pickup must be made after normal business hours. In these instances, the Upstate department requesting this type of delivery/pickup **MUST** call University Police with the following information:

1. Name of the vendor making the delivery/pick up.
2. Location of the delivery/pickup. (NOTE: University Police is **NOT** an appropriate location for delivery/pickup. **EXCEPTIONS** to this rule **MUST** be made through University Police Administration.)
3. Name, phone number, and department calling University Police.
4. Whether a department representative will be present during the delivery/pickup; and name and phone number of the person or instructions on how they can be reached when vendor arrives.
5. For **RARE** instances when a department representative cannot be present for the delivery/pickup, the department must be sure that University Police has access to the area. If University Police has keys for the area, the area can be unlocked for the delivery/pickup, and re-secured when the vendor leaves.

2. Vendor Responsibility

Vendors making delivery/pick up are to make arrangements with the department involved. Vendors called after hours should report to University Police for direction.

D. CATEGORY 4 – ONGOING REQUIRED VENDOR/AGENCY SERVICE

1. All vendors must wear an Upstate-issued visitor badge during their entire visit to Upstate, which clearly identifies the vendor/representative.
2. The insurance company representatives/Reviewers must identify themselves on the unit to nursing staff and may not visit directly with a patient without consent of the patient or patient's representative.
3. The insurance companies representatives/Reviewers are not allowed to remove the chart from the unit, make copies of, or fax records. Reviewers are only allowed to review and make notes from the records.
4. The External Health Care Providers must have a referral from an Upstate University Hospital staff member (physician, case manager, social worker, ancillary staff, or RN) in order to screen or visit the patient.
5. The External Health Care Provider may make notes on agency letterhead and leave in the Outside Records section of the medical record to communicate their findings to the health care team. The External Health Care Provider should communicate directly with case managers, social workers, nursing staff, and/or ancillary staff who will provide information to the medical team.
6. **Discontinuation:** At the time a third-party payer and/or Upstate University Hospital determines that the individuals granted non-employee access have terminated their services, with respect to Upstate University Hospital, notification of same should be directed to the offices of Case Management, Clinical Data Services/Health Information Management, and the Utilization Management Department. Aforementioned departments shall have the responsibility to notify Payroll of the deactivation.

V. CRITERIA FOR NEW PRODUCT AND EQUIPMENT TRIAL OR LOAN**A. Products**

1. Vendors may leave product (not pharmaceuticals) samples with Upstate departments upon scheduled visits.
2. If a department would like to evaluate products brought in by vendor representatives, they must contact the Value Analysis Program Coordinator or the Hospital Purchasing Department. Please reference Upstate Administrative Policy [V-01](#), Value Analysis Program.

B. Equipment Trial

If a department would like to trial new equipment, for use in the direct care of any Upstate patient, and/or the equipment is intended to be left at Upstate by the vendor for demonstration or trial, the department must adhere to the procedures outlined below including completion of "VENDOR RELEASE FORM, Authorization for Equipment Trial" (Appendix A) and comply with Administrative Policy E-03, Non-Medical Equipment Management.

1. **Equipment Trial Procedures**
 - a. The requesting department must complete a “VENDOR RELEASE FORM, Authorization for Equipment Trial.” See Appendix A. The department head requesting the equipment is responsible for completing the Vendor Release Form, and getting signatures from the vendor and Clinical Engineering.
 - b. Attach the signed “Vendor Release Form” to a requisition, and obtain your Associate Administrator’s signature as authorization for the equipment trial. The requisition must include the purpose of the trial, name of equipment, model number, quantity, and time period the trial will cover.
 - c. Submit the signed requisition and Vendor Release Form to Hospital Purchasing for a “no charge” purchase order. The Vendor must complete and sign the “Vendor Release” Form prior to delivery of equipment to Upstate. This form must be filed with the Hospital Purchasing Department before delivery of equipment is made.
 - d. Hospital Purchasing will issue a “no charge” purchase order to the vendor for delivery of equipment to Upstate. All equipment for Downtown campus, for which a “Vendor Release Form” has been submitted, must be brought to or delivered through Upstate University Hospital’s Receiving Dock located at 117 Monroe Street, Syracuse, 13210. All equipment for Community campus, for which a “Vendor Release Form” has been submitted, must be brought to or delivered through Community campus’ Receiving Dock located at 4900 Broad Road, Syracuse, NY 13215. In both instances, the equipment will be checked-in prior to delivery to the requesting department.

Medical Equipment Only:

1. After receipt at either Downtown’s or Community’s Receiving Dock, all medical equipment brought in by vendors or delivered for demonstration, loan, or trial will be delivered to Clinical Engineering for testing and/or approval for use before being delivered to the requesting department.
2. The vendor is required to provide:
 - a. Documented evidence of FDA approval for application intended for demonstration or trial.
 - b. Documented and dated evidence of performance testing (completed inspection checklist) for Clinical Engineering review.
 - c. Copy of vendor's published recommended initial inspection and performance verification protocol.
3. Clinical Engineering will perform any additional testing determined to be required per NFPA99 and NEC testing standards before releasing equipment for use in patient care. By prior arrangement with Clinical Engineering, equipment may be delivered to requestor site after check in at Downtown’s or Community’s Receiving Dock.

- a. The vendor must provide appropriate training to hospital personnel prior to using demonstration, trial, or loan equipment. Training must be documented according to individual departmental policy.
- b. The vendor's company retains title to the equipment during an evaluation and will be responsible for maintaining equipment in sound working order. The vendor's company will be responsible for all preventative maintenance and repair of equipment. See attached Appendix A for additional information.
- c. Only new products approved utilizing the Value Analysis Program may be purchased using hospital funds.
- d. Purchase commitments and/or contract signature for Upstate may only be made by the Hospital Purchasing Department.

VI. VENDOR INITIATED RECALL OR REPLACEMENT

If a vendor initiates a product/equipment recall or replacement, either formal or voluntary, it is the affected department's responsibility to document actions taken for the recall/replacement. The department must require the vendor to provide, on company letterhead, information regarding the specific recall to include, but not limited to, product name, manufacturer number, lot number affected, quantity, reason, and action taken. The vendor and department representative must date and sign the document and forward to the Hospital Purchasing Department at Widewaters as soon as possible. The vendor representative must provide written documentation to Hospital Purchasing of the necessity for the product/equipment recall (preferably a notice of recall). This document must also be forwarded to the Hospital Purchasing Department at Widewaters.

Please reference the Administrative Policy R-18, Product Recall Management for additional instruction.

VII. ATTENDANCE AT HOSPITAL MEETINGS OR PRESENTATIONS

Educational or inservice programs presented or supported by vendor representatives must have the prior approval of the department sponsoring the presentation. The department and/or staff member must make the vendor representative aware of Upstate's policy concerning vendors.

VIII. GIFTS AND FOOD

All employees are reminded that they are subject to restrictions on acceptance of gifts from vendors contained in the New York State Public Officers Law Section 73(5).

Materials explaining these restrictions can be found at:

<http://www.icope.ny.gov/about/ethc/PUBLIC%20OFFICERS%20LAW%2073%20JCOPE.pdf>

Additional information regarding the acceptance of gifts by Upstate employees is available in Upstate Policy UW I-03.

Employees with questions concerning these restrictions should contact their supervisors.

Employees with questions concerning these restrictions should contact their supervisors.

IX. DEPARTMENT AND STAFF RESPONSIBILITY

All departments and staff are responsible for assuring that vendor representatives interacting with the department comply with this policy. Non-compliant vendor representatives are to be immediately reported to University Police.

Supplemental vendor policies for specific departments may be found in their Department Policy and Procedure Manual.

X. VIOLATION OF POLICIES

All vendors are required to comply with this policy. The University Police Department will manage incidents in which vendor representatives are found on Upstate premises without the appropriate identification.

- A. Staff members who find a vendor representative in patient care areas without proper identification are required to alert University Police.
- B. Vendor representatives without a visitor badge will be escorted from the premises immediately.
- C. University Police will generate a report regarding the infraction, which will be forwarded to the Director of Hospital Purchasing. The Hospital Purchasing Department will administer the situation as follows:
 1. The first deviation from this policy will be handled with a letter of warning to the representative and his/her company.
 2. The second deviation from this policy will result in the representative being barred from Upstate for six months.
 3. The third deviation from this policy will result in the representative being permanently barred from Upstate.

Education/Related Documents:

Restriction of Cellular Phone Usage, [EVS A-115](#)

Value Analysis Program, [V-01](#)

Non-Medical Equipment Management, [E-03](#)

Product Recall Management – Hospital Purchasing, [R-18](#)

Utilization Management Program, [U-02](#)

Approved Non-Employee Hospital Access & Orientation, [V-06](#)

Patient Consent for Use and Disclosure of Protected Health Information, [P-31](#)

Provision of the Notice of Privacy Practices, [P-17](#)

Relations by the Upstate Community with Commercial Entities, [UW I-03](#)

Confidentiality, [UW C-01](#)

Form Name(s) and Number(s): N/A

Originating Department: Hospital Purchasing

**Contributing Department(s): Peri-operative Administration
University Police
Materials Management
Information Management Technologies
Patient Access Services
Utilization Management
Clinical Data Services
Privacy Officer
Case Management Department**

Evidence-Based References:

<http://www.jcope.ny.gov/about/ethc/PUBLIC%20OFFICERS%20LAW%2073%20JCOPE.pdf>
United States Office of the Inspector General

APPENDIX A
SUNY UPSTATE UNIVERSITY HOSPITAL – UNIVERSITY HOSPITAL
DOWNTOWN & COMMUNITY CAMPUSES
VENDOR RELEASE FORM
Authorization for Equipment Trial or Loan of Equipment

(Company), Located at: _____,
agrees to furnish SUNY Upstate University Hospital, Downtown & Community campuses, (collectively
“Upstate”), sample products or equipment (products), as described on the reverse side hereof, for
Upstate’s evaluation and testing purposes subject to the terms and agreements expressed below.

- 1. Company agrees to furnish equipment at no charge or cost to Upstate including delivery and all related return freight costs, installation and/or de-installation, and any insurance coverage necessary for the equipment.
2. Company agrees that its participation is voluntary, and that Upstate has made no representation, commitment, or guarantee to purchase these or additional Equipment or related supplies now or in the future.
3. Company warrants to Upstate the furnishing or use of any Equipment hereunder does not infringe any adverse valid existing patent, and agrees to indemnify and save harmless Upstate, the State University of New York and the State of New York, their regents, officers, customers, agents and employees from and against any and all claims, actions, damages, suits, proceedings, judgments, or liabilities incurred in connection with any claim, suit, or action for actual or alleged infringement based upon Upstate’s use of said equipment. Company agrees to defend, at its sole expense, any such claim, suit, or action brought against Upstate, the State University of New York and the State of New York, their regents, officers, customers, agents, and employees individually or collectively.
4. Company agrees to indemnify, defend and save harmless Upstate, the State University of New York and the State of New York, their regents officers, customers, agents, and employees from and against any and all claims, actions, damages, suits, proceedings, judgments, or liabilities arising from the use of Equipment hereunder.
5. Company agrees that Upstate may evaluate and test Equipment in such a manner as determined to be reasonable and appropriate by UH, during the period from ___/___/___, through ___/___/___ .
6. Company agrees that they will retain title to the Equipment and responsibility for any and all preventative maintenance, service and/or repairs, including without limitation any repairs necessitated by damage to Equipment while it is in Upstate’s possession, for which Upstate shall have no responsibility.
7. When de-installing, the Company must return the facility to the same condition as it was prior to the install.
8. Company agrees to remove product from Upstate at its own expense at the end of the evaluation period.
9. Vendor must familiarize themselves with the requirements set forth in Sections VI CRITERIA FOR NEW PRODUCT AND EQUIPMENT TRIAL OR LOAN and VII VENDOR INITIATED RECALL OR REPLACEMENT in the Administrative Policy, V-12, Vendor Policy.

Accepted this _____ day of _____, by:

Table with 3 columns: Company, Upstate Department, Upstate Clinical Engineering. Rows include Name, Authorized Signature, Title, Date, and Hospital Purchasing - Buyer, Purchase Order #, Date.

SUNY UPSTATE UNIVERSITY HOSPITAL, DOWNTOWN & COMMUNITY CAMPUSES
(collectively "Upstate")
VENDOR RELEASE FORM

Tracking PO #	Vendor	Mfg. Item #	Serial #	Description	Qty.	Estimated Cost	Estimated Evaluation Dates

Upstate Contact Name

Company Contact Name

Phone Number

Phone Number:

EXHIBIT E: Travel/Contract Medical Personnel Health Clearance

After this page

Policy Number: **ESH T-01**

Approved by: Medical Director

Issue Date: 05/01/2002

Applies to: Upstate Medical University

Value(s): *Respect, Integrity, Innovation*

Page(s): 1 of 3

Travel/Contract Medical Personnel Health Clearance

Review Date:	Change Description:
06/07/2016	
Revised Date:	Change Description:
06/07/2016	Vaccine intervals clarified. Clearance determination by medical director or designee.

Applies to:

Travel Nurses (RN or LPN) hired by Nursing Services
Other Travelers/Contract Medical personnel employed on a temporary basis by ancillary departments (i.e., Radiology, Respiratory Therapy).

Policy:

In accordance with the New York State Health Code, Section 405.3, all personnel having direct patient contact or accessing clinical areas will be required to have medical clearance from Employee Student Health (ESH) prior to beginning work on the patient care units.

Procedure:

- A. Travel/Contract medical personnel are scheduled with ESH for medical clearance prior to work assignment.**

- B. Travel/Contract medical personnel must provide documentation of the following:**
 - 1. Rubella (German Measles)**
 - a. Serologic documentation of positive antibody (titer)*.**
 - 2. Rubeola (Measles)**
 - a. Serologic documentation of positive antibody (titer)*.**
Exception: If born before January 1, 1957, titer is not required.
 - 3. Varicella (Chicken Pox)**
 - a. Serologic documentation of positive antibody (titer) or dates of two immunizations.**
 - 4. Hepatitis B**
 - a. Serologic documentation of positive Hepatitis B surface antibody.**
 - 5. Tuberculosis screening within one year prior to assignment**
 - a. If positive tuberculin skin test (PPD) conversion, documentation of a chest x-ray results within 12 months and no current signs or symptoms of disease.**

** Other documentation of immune status as deemed acceptable by the New York State Health Code, Section 405.3, may be provided as an alternative to titers.*

- C. Travel/Contract medical personnel will complete the Medical History Form and Allergy History Screening Sheet prior to being seen by the ESH staff.
- D. If applicable, candidate (depending on the unit/department assignment) will complete the OSHA Respirator Medical Evaluation Questionnaire and Medical Questionnaire for Particulate Respirator. [\(F82087\)](#)
- E. At the scheduled appointment time, the travel/contract medical personnel will:
1. Report to ESH.
 2. A member of the nursing staff will review the completed forms, obtain vital signs, and perform mask fit (depending on the unit/department assignment).
If the travel/contract medical personnel do not have the appropriate documentation, the appropriate tests will be done at Upstate University Hospital with the expense being charged to the traveler. Any reimbursement of expenses incurred by the traveler is negotiated between the individual and the travel company.
 3. Tuberculosis screening will be done unless the candidate is determined to be previously tuberculin skin test positive.
 - a. Tuberculin skin test (TST) will be placed.
 - b. The candidate will return to Employee Health within 48 to 72 hours to have the skin test read.
 - c. If the tuberculin skin test is non-reactive (negative), the candidate will be scheduled for a second TST in two weeks (two-step testing).
Exception: A second TST will not be required if candidate has provided documentation of a previous TST done within 12 months of starting at Upstate University Hospital. Documentation must have date placed, date read, manufacturer, lot #, expiration date, reader's name, reader's title and reaction (mm).
 - d. If the initial PPD is read as positive, a chest x-ray will be done.
 4. An ESH nurse practitioner or physician review the medical history and perform a medical examination.
 5. In the case of unacceptable antibody titers, the travel/contract medical personnel will be provided with a prescription for the necessary vaccines and return to ESH for administration and documentation of the immunization.
Expense of all vaccines will be the responsibility of the travel/contract medical person.
 - a. Rubella
 1. Negative or equivocal titer
One (1) Measles, Mumps, Rubella (MMR) Vaccine
 - b. Rubeola
 1. Negative or equivocal titer
Two (2) Measles, Mumps, Rubella (MMR) Vaccine at least four (4) weeks apart
OR
One(1) Measles, Mumps, Rubella (MMR) Vaccine if some, less than acceptable, documentation of prior immunization*

- c. **Varicella**
 - 1. **Negative or Equivocal titer**
Two (2) Varicella Vaccine - at least four (4) weeks apart
 - 6. **Hepatitis B vaccination series is recommended but not a requirement.**
 - 7. **Tetanus immunization is recommended every 10 years but is not a requirement.**
- F. Clearance**
Results of the medical assessment will be reviewed by the Medical Director or designee to determine if the travel/contract medical personnel are medically cleared to begin employment.
- 1. **Cleared to begin employment indicates that:**
 - a. **There is no health impairment that would pose a potential risk to patients or personnel.**
 - b. **All essential functions of the position can be fulfilled.**
(Description of the requirements of the position will be requested when necessary.)
 - c. **All New York State Health Code (Part 405.3) and Upstate Medical University requirements have been met.**
 - 2. **Not cleared to begin employment due to one or more of the following:**
 - a. **There is a health impairment that is identified that would pose a potential risk to patients or personnel.**
 - b. **A limitation has been determined that would prevent performance of one or more of the essential functions of the position.**
 - c. **New York State Health Code (Part 405.3) and Upstate Medical University requirements have not been met.**
- G. Clearance will be issued through the Non-employee Management System (NEMS) when all the required health documentation is complete.**

Education/Related Resources: none

Form Name(s) and Number(s):

Medical History Form, [F82010](#)

Report of Medical Examination, [F82055](#)

OSHA Respirator Medical Evaluation Questionnaire, [F82087](#)

Allergy History Screening, [F82046](#)

Originating Department: Employee Student Health

Contributing Department(s): Patient Support Services, SUNY Contracts Office, Radiology, Respiratory Therapy

References:

New York Code of Rules and Regulations (NYCRR), #10, vol. C, Chapter V, Medical Facilities, Section 405.3.

Exhibit W

VENDOR INSTRUCTIONS FOR COMPLETION OF NYS FORMS FOR CONSULTANT SERVICES AGREEMENTS

New York State Finance Law mandates the annual reporting of certain employment data from vendors that have active consultant services agreements valued above \$15,000 with any New York State agency (including SUNY Upstate Medical University at Syracuse).

For new consultant contracts (issued after 6/19/06), vendors must provide the State Consultant Services Contractor's Planned Employment form ("**Form A**") to the contracting agency prior to final execution of the contract. This form is provided only **once** and captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.

For all consulting contracts, vendors must provide the State Consultant Services Contractor's Annual Employment Report form ("**Form B**") once each year. This form is provided **annually** and captures historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Form B must be completed in triplicate and submitted by the vendor to the NYS Department of Civil Service, the Office of the State Comptroller and SUNY Upstate Medical University at Syracuse.

For Form B only, the first required reporting period will be the 2016-2017 fiscal year, April 1, 2016 - March 31, 2017. The first reports are due no later than May 15, 2017. Thereafter, reports will be due no later than May 15th of each succeeding year.

INSTRUCTIONS FOR COMPLETING FORM A AND FORM B:

Form A and Form B should be completed for contracts for consulting services in accordance with the following:

Scope of Contract (Form B only): a general classification of the single category that best fits the predominate nature of the services provided under the contract.

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract.

(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at <http://online.onetcenter.org> to find a list of occupations.)

Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.

Number of hours (to be) worked: for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.

Amount Payable under the Contract: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

INSTRUCTIONS FOR ANNUAL SUBMISSION OF CONSULTANT SERVICES DATA:

Reports that are to be submitted to SUNY Upstate Medical University at Syracuse may be transmitted as follows:

By Mail

Contracts Office, Suite 2050 SLC
SUNY Upstate Medical University
750 East Adams Street
Syracuse, New York 13210

By Fax

(315) 464-4679

Reports that are to be submitted to Office of the State Comptroller may be transmitted as follows:

By Mail

New York State Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, New York 12236
Attn: Consultant Reporting

By Fax

(518) 474-8030 or (518) 473-8808

Reports that are to be submitted to Department of Civil Service may be transmitted as follows:

By Mail:

New York State Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

EXHIBIT X: Form A
After this page

EXHIBIT Y: Form B

After this page

EXHIBIT Z: SUNY Business Associate Agreement

After this page

EXHIBIT Z

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is made by and between THE STATE UNIVERSITY OF NEW YORK ("SUNY"), an educational corporation organized and existing under the laws of the State of New York, having its principal offices located at State University Plaza, Albany, New York 12246, acting for and on behalf of

Upstate University Hospital
"Covered Entity"

with its address at

750 East Adams Street
Street Address

Syracuse NY 13210
City State Zip

and

"Business Associate"
with its principal offices at

Street Address

City State Zip

Facsimile Number:

Covered Entity and Business Associate, collectively, may hereinafter be referred to as the "Parties," as in the parties to this Agreement.

The Parties have entered into one or more certain agreements (each and together, the "Underlying Agreement") under which the Business Associate uses and/or discloses PHI in its performance of the Services described below. The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Standards for Security of Electronic Protected Health Information (the "Security Rule) under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including the 2013 HIPAA Omnibus Rule. This Agreement, in conjunction with the Privacy and Security Rules, sets forth the terms and conditions pursuant to which PHI (electronic and non-electronic) that is created, received, maintained, or transmitted by, the Business Associate from or on behalf of Covered Entity, will be handled between the Business Associate and Covered Entity and with third parties during the term of their Underlying Agreement and after its termination. The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

1.1 Services. Pursuant to the Underlying Agreement, Business Associate provides services

("Services") for Covered Entity that involve the use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only: (a) to its employees, subcontractors and agents, in accordance with Section 2.1(d), or (b) as otherwise permitted by or as required by the Privacy or Security Rule.

1.2 Business Activities of the Business Associate. Unless otherwise limited herein and if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the Business Associate may:

- (a) use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.
(b) disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to Covered Entity, in writing, that (i) the disclosures are required by law, as provided for in 45 CFR § 103 or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 CFR § 164.504(e)(4) and § 164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
(c) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

1.3 Business Associate understands and agrees that its access to Protected Health Information stored in databases and information systems at the Covered Entity is subject to review and audit by the Covered Entity or agents of the State of New York at any time, that remote audits of such access may occur at any time, if remote access exists, that on-site audits of such access will be conducted during regular business hours, and that any review or audit may occur with or without prior notice by the Covered Entity.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

2.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- (a) Not use or disclose PHI other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- (c) Report, in writing, to Covered Entity within five (5) business days any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or breach reporting efforts; this notice shall be deemed sufficient if it is delivered to the Parties at their respective addresses listed above and the Privacy Officer using the following contact information:

<u>Cynthia Nappa</u>			
	Privacy Officer		
<u>750 East Adams Street</u>			
	Street Address		
<u>Syracuse</u>	<u>NY</u>	<u>13210</u>	
City	State		Zip

- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (e) Except as provided in this subsection, ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, shall not export PHI beyond the borders of the United States of America. If the Business Associate or its agent or subcontractor exports PHI beyond the borders of the United States of America, then, subject to the United States and New York State export control and foreign outsourcing laws, rules and regulations, the Business Associate will provide to Covered Entity prior to such export, a reasonable assurance, evidenced in writing, that the Business Associate, subcontractor, or agent will comply with the privacy and security obligations of Business Associate the set forth either in this Agreement or in applicable law, rules and regulations with respect to such PHI.
- (f) Agrees to provide the Covered Entity, at the Covered Entity's request, a list of all agents and subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate.
- (g) Within five (5) business days of a request from Covered Entity, make available PHI in a designated record set, if applicable, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524.

- (h) Within five (5) business days of a request from Covered Entity, make any amendment(s) to PHI, if applicable, in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.
- (i) As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
- (j) To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- (k) Upon request, may make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules.
- (l) Comply with minimum necessary requirements under the HIPAA Rules.

2.2 Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that Business Associate is required to comply with the confidentiality, Disclosure and re-Disclosure requirements of 10 NYCRR Part 63 to the extent such requirements may be applicable.

2.3 If, in the performance of the Services, Business Associate extends, renews or continues credit to patients or regularly allows patients to defer payment for services including setting up payment plans in connection with one or more covered accounts, as defined at 15 USC 1681m(e)(4), the Business Associate must comply with the Federal Trade Commission's "Red Flag" Rules, if applicable, or develop and implement a written identity theft prevention program designed to identify, detect, mitigate and respond to suspicious activities that could indicate that identity theft has occurred in the Business Associate practice or business.

2.4 Business Associate acknowledges that if Business Associate or any of its agents or subcontractors violate any Security provision as Required By Law specified in subparagraph 2.1(b) above, sections 1176 and 1177 of the Social Security Act 42 USC §1320d-5, 1320d-6 shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such Security provision, thus resulting in civil or criminal penalties.

2.5 Covered Entity and Business Associate recognize that unsecured PHI may contain the social security numbers, financial account information or driver's license number or non-driver identification card number ("private information" as defined in the New York State Information Security Breach and Notification Act, as amended ("ISBNA"), General Business Law § 889-aa; State Technology Law § 208). Subject to the issue of

interim final regulations by the Secretary and any periodic updates thereof all of which are incorporated by reference in this Agreement, in the event of a Breach of unsecured PHI containing an Individual's private information, Business Associate shall, in addition to notifying Covered Entity as required under in subparagraph 2.1(c), comply with the provisions of the New York State ISBNA. Business Associate shall be liable for the costs associated with such Breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.

3. RESPONSIBILITIES OF COVERED ENTITY.

3.1 With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees:

- (a) to inform the Business Associate of any limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) to inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (c) to notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement. except if the Business Associate will use or disclose PHI for (and the Underlying Agreement includes provisions for) data aggregation or management and administration and legal responsibilities of the Business Associate.
- (d) Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.

4. REPRESENTATIONS AND WARRANTIES [THIS SECTION MAY BE REMOVED IF IT IS INCLUDED IN THE UNDERLYING AGREEMENT]

4.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other Party:

- (a) that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.

- (b) that neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. Each Party represents and warrants to the other Party that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.
- (c) that it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.
- (d) that all of its employees and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that Business Associate has agreed to adhere to with regards to the use and disclosure of PHI of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Standard will be communicated to the Business Associate, in writing, and in a timely fashion.
- (e) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.
- (f) that neither the Party, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deferred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (i) the neglect or abuse of a patient, (ii) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (iii) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (iv) the unlawful, manufacture, distribution, prescription or

dispensing of a controlled substance, or (v) interference with or obstruction of any investigation into any criminal offense.

4.2 Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect at any time during the term of this Agreement.

5. TERMS AND TERMINATION

5.1 **Term.** The Term of this Agreement shall commence on the Effective Date, and shall terminate on the termination date of the relevant Underlying Agreement or on the date Covered Entity terminates this Agreement for cause as authorized in paragraph 5.2 of this Section, whichever is sooner.

5.2 **Termination for Cause.** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

5.3 **Obligations of Business Associate upon Termination.** Business Associate agrees to return or destroy all PHI pursuant to 45 CFR § 164.504(e)(2)(l). Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify Covered Entity in writing and the Covered Entity may disagree with the Business Associate's determination. Said notification shall include: (a) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (b) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to Covered Entity and require such subcontractor or agent to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractor's and/or agent's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

5.4 **Automatic Termination.** This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Underlying Agreement.

6. CONFIDENTIALITY [THIS SECTION MAY BE REMOVED IF IT IS INCLUDED IN THE UNDERLYING AGREEMENT]

6.1 **Confidentiality Obligations.** In the course of performing under this Agreement, each Party may receive, be exposed to or acquire the Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this Agreement, "Confidential Information" shall not include PHI, the security of which is the subject of this Agreement and is provided for elsewhere. The Parties including their employees, agents, representatives and subcontractors: (a) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement, (b) only permit use of such Confidential Information by employees, agents, representatives and subcontractors having a need to know in connection with performance under this Agreement, and (c) advise each of their employees, agents, representatives and subcontractors of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (d) after it becomes publicly available through no fault of either Party; (e) which is later publicly released by either Party in writing; (f) which is lawfully obtained from third parties without restriction; or (g) which can be shown to be previously known or developed by either Party independently of the other Party.

7. INSURANCE AND INDEMNIFICATION [THIS SECTION MAY BE REMOVED IF IT IS INCLUDED IN THE UNDERLYING AGREEMENT]

7.1 **Insurance.** Business Associate will procure and maintain in effect during the term of this Agreement: (a) general liability insurance coverage with minimum limits of \$1 million per occurrence and \$3 million aggregate; and (b) as applicable, professional liability insurance coverage within minimum limits of \$1 million per occurrence and \$3 million in aggregate; and (c) workers' compensation insurance coverage within statutory limits of state law in which Business Associate is located. Upon request, Business Associate shall provide evidence of continuous coverage to Covered Entity.

7.2 **Indemnification.** The Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity's employees, trustees, officers, agents and other members of its workforce from any costs, damages, expenses, judgments, losses, and attorney's fees arising from any breach of this Agreement by Business Associate or any of its agents or subcontractors, or arising from any negligent or wrongful acts or omissions of Business Associate or any of its

agents or subcontractors, including failure to perform its obligations under the Privacy Rule. The Business Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason.

8. MISCELLANEOUS

8.1 **Business Associate.** For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a Covered Entity under the Privacy or Security Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 CFR § 164.504(a), as the Business Associate for purposes of this Agreement.

8.2 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement, shall survive termination of this Agreement indefinitely.

8.3 **Amendments; Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

8.4 **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

8.5 **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.6 **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given above, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed above. A copy of any such notice shall also be given in the same manner to the Privacy Officer listed above. Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

8.7 **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

8.8 **Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

8.9 **LIMITATION OF LIABILITY.** COVERED ENTITY SHALL NOT BE LIABLE TO BUSINESS

ASSOCIATE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

8.10 **Changes in Law.** The Parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws. The Parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the Parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement and, in such event, the Parties agree to use their best efforts to modify in an executed written agreement the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this Agreement within thirty (30) days of receipt of notice from one Party to the other Party setting forth the proposed changes. If the Parties fail to so modify this Agreement, then either Party may, by giving the other an additional sixty (60) days written notice, terminate this Agreement, unless this Agreement would terminate earlier by its terms. In the event amendments or changes in existing law, general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the Parties similar to that expressed in this Agreement, then, under such circumstances, where renegotiation of the applicable terms of this Agreement would be futile, either Party may provide the other at least sixty (60) days advance written notice of termination of this Agreement, unless this Agreement would terminate earlier by its terms. Upon termination of this Agreement as hereinabove provided, neither Party shall have any further obligation hereunder except for (a) obligations occurring prior to the date of termination, and (b) obligations, promises or covenants contained herein which are expressly made and intended either to arise upon the termination of this Agreement or to extend beyond the term of this Agreement.

8.11 **Construction of Terms.** The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the Department of Health and Human Services of the Office of Civil Rights from time to time.

8.12 **Contradictory Terms.** Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superseded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

8.13 **Governing Law.** This Agreement and any Underlying Agreement shall be governed by New York law notwithstanding any conflicts of law provisions to the contrary.

9. DEFINITIONS.

9.1 The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, PHI, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

9.2 Specific definitions include:

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Party identified as the Business Associate above.
- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Party identified as the Covered Entity above.
- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (d) Electronic Protected Health Information or Electronic PHI. "Electronic PHI" shall mean PHI which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.
- (e) Privacy Officer. "Privacy Officer" shall have the meaning as set out in its definition at 45 CFR § 164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised, and in reference to this Agreement, shall mean the person identified as the Privacy Officer above.
- (f) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164.
- (g) Security Rule. "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162, and 164.
- (h) A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

THE STATE UNIVERSITY OF NEW YORK on behalf of COVERED ENTITY

By: _____

Print Name: _____

Print Title: _____

Date: _____

BUSINESS ASSOCIATE

By: _____

Print Name: _____

Print Title: _____

Date: _____

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

Question 1: Is there an incumbent for this RFP or with similar scope of work? If, yes, please list the current contractor and describe the task current contractor is assigned.

Answer 1: There are many vendors that provide temporary medical staffing services to Upstate. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 2: On page 11 number 7 states "Submit three (3) hard copies of your proposal and one thumb drive, each hard copy bearing an original signature and notarized Acknowledgement Forms, to the address provided below." Can we have one original copy with the original signatures included and 2 hard copies of the copies of the signature or do you need all three hard copies to have each original signature page included?

Answer 2: As stated in Section 4(7) of the IFB, each hard copy should bear an original signature and notarized Acknowledgement Forms.

Question 3: How large is the contract for the 2017-2018 year?

Answer 3: Upstate anticipates that there will be multiple contracts awarded to multiple vendors. Prior to the bid opening, Upstate has no way to determine which vendors will bid awarded contracts or for which job titles. Therefore, the size of each contract would be difficult to predict.

Question 4: How large is the contract and each renewal year?

Answer 4: Under a Resulting Agreement, the contract term for services shall be for a period of three (3) years, and it may be renewed for an additional two (2) year period upon the same terms and conditions.

Question 5: What agencies do you currently use?

Answer 5: There are many vendors that provide temporary medical staffing services to Upstate. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 6: What rates do those agencies charge?

Answer 6: There are many vendors that provide temporary medical staffing services to Upstate at different rates. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 7: Will this be a single or multi-award?

Answer 7: As stated in Section 2(D) "Method of Contract Award," Upstate will award multiple agreements for each job title contained in Exhibit B to all qualified vendors able to satisfy the requirements of the IFB.

Question 8: Do you require the Proof of Compliance with Workers' Compensation Coverage Requirements and Worker's Compensation Insurance and Disability Benefits Requirements included in this bid or submitted if awarded the contract?

Answer 8: Bidders' proposals should be accompanied by proof of Workers' Compensation insurance coverage and Disability Benefits insurance coverage as set forth in Section 7(28) "Insurance."

Question 9: Will they consider a Managed Service Agreement? One vendor w/ subcontracted vendors?

Answer 9: No, Upstate will not consider a Managed Service Agreement with one vendor with subcontracted vendors.

Question 10: I notice the Cost Worksheet doesn't have minimum requirements for Pay Rate/hour and Mark up multiplier. This is the first time I've seen that. Is that an oversight?

Answer 10: No, that is not an oversight.

Question 11: Can you give me the approximate yearly spend for this contract?

Answer 11: Historically, Upstate typically spends between \$25-\$30 million per year on temporary clinical staffing services.

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

Question 12: Please confirm that all of the information/documents to be submitted are noted on the Bid Submission Checklist (page 43). Specifically, that we do not have to submit a FULL M/WBE Utilization Plan with our bid response – only form 107.

Answer 12: The information/documents to be submitted are all noted on the Bid Submission Checklist. Bidders should submit completed M/WBE Forms 104, 107 and 108. Form 107 is Bidders' M/WBE Utilization Plan, which should be completed and submitted with your bid response.

Question 13: I received the bid for temp nursing services. It appears to be a multi award versus an exclusive with one company correct?

Answer 13: Correct.

Question 14: Is there or has there been a separate IFB for positions related more toward Administrative Healthcare, or is that encompassed within if we were to become an approved vendor via this bid process?

Answer 14: In the past, Upstate has conducted a separate procurement effort for temporary clerical staffing services.

Question 15: Why is the contract out for bid? Is it required to be put out for bid?

Answer 15: Upstate's current contracts for temporary clinical staffing services expire on April 30, 2017. The objective of this procurement effort is to protect the interests of New York State and its taxpayers, and promote fairness in contracting with the business community. As a New York State agency, Upstate is procuring these services in accordance with Article 11 of the New York State Finance Law.

Question 16: Who are your current incumbent vendors for these services?

Answer 16: There are many vendors that provide temporary medical staffing services to Upstate. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 17: Are you satisfied with your current vendors? Are your needs being met?

Answer 17: Yes, Upstate is satisfied with its current vendors and Upstate's needs are being met.

Question 18: What are your current hourly bill rates by classification?

Answer 18: There are many vendors that provide temporary medical staffing services to Upstate at different rates. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 19: What were your hours of usage by each classification for the last 3 years?

Answer 19: We do not have the total hours of usage by each classification for the last three years, but between November 1, 2015 and October 31, 2016, the hours of usage for each job title were as follows:

Certified Nursing Assistant (CNA) – 0

Licensed Practical Nurse (LPN) - 3,390

Mental Health Therapy Aide – 0

Nurse Practitioner – 0

OB Technician – 0

Physician Assistant – 0

Registered Nurse – Ambulatory – 2,163

Registered Nurse - Case Manager/Utilization Review/CDI – 0

Registered Nurse - Certified Nurse Anesthetist – 0

Registered Nurse - Critical Care (Adult and Pediatric), Pediatrics, Step Down, Radiology, PACU, ICU Float – 73,653

Registered Nurse - Emergency Department (Adult, Pediatrics, Triage, Minor Treatment) - 38,272

Registered Nurse - Labor and Delivery – 1,061

Registered Nurse - Med/Surg (Non-Telemetry; including Rehabilitation and Transitional Care Unit) - 5,346

Registered Nurse - Med/Surg (Telemetry), Med/Surg Float - 38,480

Registered Nurse - Operating Room (Adult or Pediatric), Cardiac Cath, Procedural areas - 15,704

Registered Nurse - Post Partum - 666

Registered Nurse – Psych - 1,934

Safety Companion (1:1 Patient Observation) - 520

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

Surgical/Operating Room Tech (Adult or Pediatric) - 1,186
Anesthesia Technician - 3,120
Echo Technician - 520
EEG Technician – 0
Laboratory Technician - Clinical Lab Technologist – 0
Laboratory Technician – Histotechnologist – 0
Laboratory Technician – Phlebotomist – 0
Occupational Therapist 2 - 5,658
Occupational Therapy Assistant - Certified (COTA) – 0
Pharmacist – 0
Pharmacy Technician – 0
Physical Therapist - 208
Physical Therapist Assistant – 0
Radiation Therapist – 0
Radiologic Technologist – Diagnostic - 1,747
Radiologic Technologist - CT/MRI - 832
Radiologic Technologist – Interventional – 0
Respiratory Therapist – 3,536
Sonographer - Ultrasound/Vascular Technologist – 1,144
Speech Language Pathologist - 0

Question 20: Are we able to take exceptions and propose language to any of the terms and/or requirements?
Answer 20: Refer to Section 7(5) "Bidder's Terms and/or Conditions."

Question 21: The bid document does not include Exhibits C, and F through V. Were these left out intentionally?
Answer 21: Yes. There are no such exhibits to this IFB.

Question 22: Is Exhibit D, Appendix A (Vendor Release Form, Authorization for Equipment Trial or Loan of Equipment) applicable? Does it need to be signed and returned with our response?
Answer 22: Exhibit D is applicable to this IFB, but its Appendix A does not have to be signed and returned with Bidders' response.

Question 23: Are Exhibits W, X, and Y (Consultant Services) applicable? Do they need to be completed with the Bid?
Answer 23: Exhibits W, X, and Y are applicable. They do not need to be completed with the Bid.

Question 24: We are not a MWBE organization and we do not wish to subcontract out our business that we can provide. If we choose not to use subcontractors to meet your MWBE goals, will we be disqualified?
Answer 24: You will not be automatically disqualified. It is understood that with some contracts it is more difficult to achieve M/WBE utilization than others. Consistent with SUNY's commitment and in accordance with Article 15-A of the NYS Executive Law, contractors are required to ensure that good faith efforts are made to include meaningful participation by NYS Certified M/WBE's. The requirements apply to all SUNY contracts in excess of \$25,000 for commodities and services.

Question 25: How many maximum number of awards do you wish to make?
Answer 25: There is no maximum number of awards.

Question 26: It says that "The proposal must be fully and properly executed by an authorized person, and the authorized person's signature must be notarized." Do you want us to sign the acknowledgement form and notarize it? Or do you want us to notarize other forms as well?
Answer 26: The Acknowledgment Form should be completed by a notary public. Some of the documents relative to this IFB (such as the ST-220 CA tax certification form) also require a notarized signature.

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

Question 27: Do you want us to submit the copy of our insurance with Workers' Compensation insurance coverage and Disability Benefits insurance coverage with our proposal or can we submit the same at the time of award? What forms do we need to submit as a proof for the Workers' Compensation insurance coverage and Disability Benefits insurance coverage apart from the insurance certificate if we wish to take the coverage upon award?

Answer 27: Vendors should submit proof of insurance at the time of bid submission or shortly after the bid opening. Please refer to Section 7(28) "Insurance" for a listing of acceptable forms of proof for each type of insurance.

Question 28: We are MBE certified from NMSDC, MWBE from the Commonwealth of Virginia and CPUC and MBE from NY State (In process) Do we qualify for the 30% goal?

Answer 28: If you have an application in as an NYS certified M/WBE with the NYS Economic Development (Empire State Development), you must provide your application number and we would be able to consider you an M/WBE and qualify for part of the 30% goal.

Question 29: Do we need to submit an M/WBE Utilization Plan if we do not intend to utilize the subcontractors as being a certified MWBE firm we qualify to meet the goal?

Answer 29: Yes. You must submit an M/WBE Utilization Plan. Each MBE is responsible for doing Good Faith Efforts to achieve WBE Utilization for contracts on which they bid (and vice versa).

Question 30: Do we need to submit the ST-220 CA form "Contractor Certification to Covered Agency" with our proposal or can we submit this form upon award?

Answer 30: The ST-220 CA tax certification form should be submitted with your firm's proposal.

Question 31: Being an M/WBE Firm If we meet the 30% goal, do we still need to fill the M/WBE Contract Goals section? Or can we simple state the Percentage here considering that we will meet the goal without using the subcontractors?

Answer 31: You can use the M/WBE Utilization Plan to address this.

Question 32: We have applied for the NY State MWBE certification however are waiting for the certification. Will you consider our firm as meeting the 30% goal or do we still need to utilize NY certified MWBE subcontractors?

Answer 32: If you have an application in as an NYS certified M/WBE with the NYS Economic Development (Empire State Development), you must provide your application number and we would be able to consider you an M/WBE and qualify for part of the 30% goal. Each MBE is responsible for doing Good Faith Efforts to achieve WBE Utilization for contracts on which they bid (and vice versa).

Question 33: We need to submit 3 hard copies of the proposal so should we include the hard copy of the Exhibit B - 1 in every hard copy or should we submit 3 hard copies without Exhibit B-1 and include the Exhibit B-1 in the Thumb Drive?

Answer 33: As stated in Section 4(14), each copy of a Bidder's proposal should be accompanied with the Exhibit B-1 Cost Worksheet.

Question 34: Do we need to submit 1 Original and 3 Copies of the proposal and one Copy of the proposal in flash Drive?

Answer 34: As stated in Section 4(7), please submit three (3) hard copies of your proposal and one thumb drive, each hard copy bearing an original signature and notarized Acknowledgement Forms.

Question 35: If our efforts are unsuccessful, will we be able to how may we obtain an M/WBE waiver?

Answer 35: If you are unsuccessful in reaching the M/WBE Utilization goal we will have to ask for a waiver with the SUNY-wide M/WBE Office and with the New York State Governor's Office.

Question 36: May we have the M/WBE Coordinator on-site contact information.

Answer 36:

**Carl A. Thomas Jr., MBA
Supplier Diversity Coordinator
SUNY Upstate Medical University
750 East Adams Street
Syracuse, NY 13210
Tel: 315-464-4657
E-mail: thomac@upstate.edu**

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

Question 37: Would you be able to provide a list of M/WBE agencies that I can contact to include in this contract?

Answer 37: You can locate certified New York State M/WBE's by searching the online directory here: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

Question 38: How many vendors received this request for RFP?

Answer 38: Upstate sent a web link to IFB S-1166 to 68 vendors.

Question 39: How many vendors do you plan to award preferred supplier status?

Answer 39: Upstate does not plan to award "preferred supplier status" to any particular vendors.

Question 40: How many temporary staffing vendors do you currently have?

Answer 40: There are many vendors that provide temporary medical staffing services to Upstate. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 41: What is/are the current hourly pay rate and/or yearly salary for each position of Certified Nursing Assistant (CNA), Licensed Practical Nurse (LPN), Mental Health Therapy Aide, Nurse Practitioner, OB Technician, Physician Assistant, Registered Nurse – Ambulatory, Case Manager/Utilization Review/CDI (Clinical Documentation Improvement), Certified Nurse Anesthetist, Critical Care (Adult and Pediatric), Pediatrics, Step Down, Radiology, PACU, ICU Float, Emergency Department (Adult, Pediatric, Triage, and Minor Treatment), Labor and Delivery, Med/Surg (Non-Telemetry), including Rehabilitation and Transitional Care Unit), Med/Surg (Telemetry), Med/Surg Float, Operating Room (Adult/Pediatric), Cardiac Cath, Procedural Areas, Post-Partum, Psych – Safety Companion (1:1 Observation), Surgical/Operating Room Tech (Adult/Pediatric), Anesthesia Technologist, Echo Technician, EEG Technician, Laboratory Technician- Clinical Lab Technologist, Laboratory Technician- Histotechnologist, Laboratory Technician- Phlebotomist, Occupational Therapist, Occupational Therapy Assistant- Certified (COTA), Pharmacist, Pharmacy Technician, Physical Therapist, Physical Therapist Assistant, Radiation Therapist, Radiologic Technologist-Diagnostic, Radiologic Technologist- CT/MRI, Radiologic Technologist- Interventional, Respiratory Therapist, Sonographer- Ultrasound/Vascular Technologist, and Speech Language Pathologist found in "EXHIBIT B – JOB TITLES" (pages 68-78)?

Answer 41: There are many vendors that provide temporary medical staffing services to Upstate at different rates. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 42: How many of each position listed above (in "EXHIBIT B – JOB TITLES" pages 68-78) are you seeking in total?

Answer 42: Upstate's temporary clerical staffing needs tend to fluctuate depending on the services offered and the needs within all of the different departments. It would be impossible to predict how many temporary clerical staffing will be utilized for each position over the duration of any resulting agreement.

Question 43: For each position listed in the question above (in "EXHIBIT B – JOB TITLES" pages 68-78), how many Full-Time Equivalent (FTE) are currently utilized?

Answer 43: Between November 1, 2015 and October 31, 2016, Upstate has utilized the following FTE usage by job title:

Certified Nursing Assistant (CNA) – 0

Licensed Practical Nurse (LPN) - 1.6

Mental Health Therapy Aide – 0

Nurse Practitioner – 0

OB Technician – 0

Physician Assistant – 0

Registered Nurse – Ambulatory – 1.0

Registered Nurse - Case Manager/Utilization Review/CDI – 0

Registered Nurse - Certified Nurse Anesthetist – 0

Registered Nurse - Critical Care (Adult and Pediatric), Pediatrics, Step Down, Radiology, PACU, ICU Float – 35.4

Registered Nurse - Emergency Department (Adult, Pediatrics, Triage, Minor Treatment) - 18.4

Registered Nurse - Labor and Delivery – 0.5

Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services

Registered Nurse - Med/Surg (Non-Telemetry; including Rehabilitation and Transitional Care Unit) - 2.6

Registered Nurse - Med/Surg (Telemetry), Med/Surg Float - 18.5

Registered Nurse - Operating Room (Adult or Pediatric), Cardiac Cath, Procedural areas - 7.6

Registered Nurse - Post Partum - 0.3

Registered Nurse – Psych - 0.9

Safety Companion (1:1 Patient Observation) - 0.3

Surgical/Operating Room Tech (Adult or Pediatric) - 0.6

Anesthesia Technician - 1.5

Echo Technician - 0.3

EEG Technician – 0

Laboratory Technician - Clinical Lab Technologist – 0

Laboratory Technician – Histotechnologist – 0

Laboratory Technician – Phlebotomist – 0

Occupational Therapist 2 - 2.7

Occupational Therapy Assistant - Certified (COTA) – 0

Pharmacist – 0

Pharmacy Technician – 0

Physical Therapist - 0.1

Physical Therapist Assistant – 0

Radiation Therapist – 0

Radiologic Technologist – Diagnostic - 0.8

Radiologic Technologist - CT/MRI - 0.4

Radiologic Technologist – Interventional – 0

Respiratory Therapist – 1.7

Sonographer - Ultrasound/Vascular Technologist – 0.6

Speech Language Pathologist - 0

Question 44: What will the regular schedule be for each position listed above (in "EXHIBIT B – JOB TITLES" pages 68-78)?

Answer 44: Schedules can fluctuate depending on the given job title, department in which clinical temporary staffing is employed and the particular shifts in which there are openings.

Question 45: In regards to supervision, what type of oversight is provided by the University?

Answer 45: As stated in Section 6(D) "Reporting/Accountability," Successful Bidder's employees assigned to Upstate must report and take their instructions from the appropriate Upstate department head or his/her designee.

Question 46: Do you have a budget estimate for 2016, and if so, what is it?

Answer 46: Historically, Upstate typically spends between \$25-\$30 million per year on temporary clinical staffing services.

Question 47: Do the M/WBE forms 104 (Equal Opportunity Policy Statement), 107 (Utilization Form), and 108 (EEO Staffing Plan) have to be handed in at the time of bidding?

Answer 47: The information/documents to be submitted are all noted on the Bid Submission Checklist. Bidder should submit completed M/WBE Forms 104, 107 and 108 with its bid response.

Question 48: Are the references requested as described in "Section 3: Proposal Requirements - A3" required to have reference letters in addition to completion of Attachment 4?

Answer 48: No. Reference letters are not required.

Question 49: Will Services be confined to a single location?

Answer 49: No. As stated in Section 2E "Utilization," Successful Bidders' candidates may be utilized at either of Upstate's campuses, depending on operational needs.

Question 50: Non-Collusive Document – Is this document necessary? We are a LLC ??? Is there a different form for LLC's?

Answer 50: Yes. The Non-Collusive Bidding Certification is necessary. There is not a different form for LLC's.

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

Question 51: MWBE Forms – Is this document necessary as we don't use subs and won't be adhering to the MWBE goal?

Answer 51: Yes. The M/WBE Forms should be completed and submitted with Bidders' proposals.

Question 52: ST-220-CA: We actually sent a new one in July of 2016. Please let us know if the one you have on file for us from 7/2016 will suffice or if we need to send a new one.

Answer 52: Bidders should submit a completely new ST-220-CA.

Question 53: ST-220-TD: This wasn't listed on the submission checklist but I wanted to confirm it wasn't required as Melissa said it's something that's been included in the past. Please confirm.

Answer 53: As stated in Section 7(40) of the IFB, complete one (1) original copy of the NYSDTF Form ST-220-TD and return to the Department of Taxation and Finance. The form can be found at: https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf.

Question 54: Vendor Responsibility Questionnaire: We filled one out as recently as July, will this be acceptable? If so, do we need to fill out a Statement of No Change?

Answer 54: Statements of No Change to a Bidder's Vendor Responsibility Questionnaire are not acceptable. Please complete a new Vendor Responsibility Questionnaire.

Question 55: EEO Staffing Plan: Didn't recall this being done in the past so we're wondering how we're supposed to estimate how many employees we'll have in each category. Can you let me know you'd like this done?

Answer 55: The instructions for completing this document are included on Page 2 of M/WBE form 108.

Question 56: Please explain: "Successful Bidder must also provide pre-job training for their employees prior to assignment to Upstate. This training shall include, but not be limited to: introduction to safety measures and procedures, personal appearance, grooming and courtesy; and legal rights and responsibilities" (p. 21 – Section 6 - Paragraph Q.)

Answer 56: The Successful Bidder must provide such training to its employees.

Question 57: Not clear, please explain: "Bidder's standard terms and conditions will not be considered relevant to its proposal or to the contract awarded and should not be included with its proposal." (p. 22 – Section 7 - Paragraph 5.)

Answer 57: Any extraneous terms or conditions demanded of Upstate by the Bidder will not be considered and should not be included in Bidders' proposals.

Question 58: What is the average cost of parking per day? (p. 17 – Section 6 - Paragraph F.)

Answer 58: Parking is paid by the month. You will have your choice of the parking garage or an off campus lot with shuttle service. The garage is available to off campus parkers on the weekend at no additional charge. The average parking fee per month is about \$90 (a little cheaper if you choose an off campus lot). This fee will cover you at either our Downtown or Community campus.

Question 59: Regarding the Education Verification, do we have to go thru a vendor or can we provide a copy of their degree? (p. 20 – Section 6 - Paragraph M.)

Answer 59: If evidence of education, qualifications, credentials etc., are required/needed, Upstate will advise the vendor on how to provide this information. A Vendor Management System may be utilized for some, not all, titles so it will depend on the job title as to whether the information will need to be uploaded to a system or will be returned directly to Upstate.

Question 60: Is there a fee associated with the VMS? (p. 15 – Section 6 - Paragraph B.)

Answer 60: No. Usage of the VMS is free for Upstate's contracted agencies."

Question 61: Regarding the MWBE requirements, may these requirements only be fulfilled using NY approved MWBE businesses? Or does any of our own work with MWBE businesses qualify us? (p. 23 – Section 7 - Paragraph 11)

Answer 61: Only New York State Certified M/WBE's can be considered towards the 30% M/WBE Utilization Goal. It should be noted that there are many out of state businesses that have gotten NYS Certified as a M/WBE, but that said, we will only consider firms that have gone through those efforts for our utilization numbers.

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

Question 62: Are we required to bid on all specialties in this solicitation or can we only bid on the Pharmacists and Pharm Techs? (p. 68 – Exhibit B)

Answer 62: As stated in Section 3(B) "Pricing," Bidders can provide a quote for any or all job titles.

Question 63: Who is the incumbent?

Answer 63: There are many vendors that provide temporary medical staffing services to Upstate. There is no one incumbent. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 64: How many providers (Pharmacists / Pharm Techs) should we expect to credential to fulfill the as-needed staffing requirements?

Answer 64: It is impossible to predict how many pharmacists or pharmacy technicians Upstate will need over the term of any resulting agreement. These job titles are included in this IFB in the event that they are needed in the future. Schedules can fluctuate depending on the given job title, department in which clinical temporary staffing is employed and the particular shifts in which there are openings.

Question 65: Historically, what has been the monthly usage of these providers in the last 12 months?

Answer 65: Over the last 12 months, Upstate has not used any temporary pharmacists or temporary pharmacy technicians.

Question 66: What are the anticipated hours of coverage?

Answer 66: Schedules can fluctuate depending on the given job title, department in which temporary clinical staffing is employed and the particular shifts in which there are openings.

Question 67: Will you accept quotes with price increases for multi-year contracts?

Answer 67: No. As stated in Section 3(B) "Pricing," other than changes to the Bill Rates listed in Section 7(35) that are based on fluctuations in the unadjusted Consumer Price Index for All Urban Consumers (CPI-U) of All Items in the Northeast Region, if awarded a contract, Successful Bidder must honor the Bill Rates it provides in Exhibit B-1 for the term of any Resulting Agreement.

Question 68: Do you intend to make multiple awards?

Answer 68: Yes. As stated in Section 2(D) "Method of Contract Award," Upstate will award multiple agreements for each job title contained in Exhibit B.

Question 69: Will awardees be allowed an opportunity to negotiate the terms of the contract prior to signing?

Answer 69: No. As stated in Section 7(5) "Bidder's Terms and/or Conditions," No extraneous terms or conditions will be incorporated into the contract awarded unless approved in writing by Upstate's Office of General Counsel. Acceptance and/or processing of a Bidder's proposal shall not constitute acceptance of a Bidder's extraneous terms and conditions.

Questions 70: Are there any penalties or damages incurred if unable to fill any of the locums openings?

Answer 70: No. There are no penalties.

Question 71: What is the anticipated spend in the base year of a new contract?

Answer 71: Prior to the bid opening, Upstate has no way to determine which vendors will bid awarded contracts or for which job titles. Therefore, it would be impossible to predict how much money will be spent in the base year of a new contract.

Question 72: Shall prices quoted be all-inclusive rates (including travel costs)?

Answer 72: Each Successful Bidder will be expected to pay for travel expenses, housing and other ordinary costs associated with the placement of all temporary clinical staffing personnel at Upstate. Such costs include any pre-employment drug screening, background screening, physicals or self-studies prior to New Employee Orientation, and must be considered and included by the Bidder when calculating their rates.

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

Question 73: Are you looking for local candidates?

Answer 73: Upstate anticipates that candidates for some of the job titles will be filled by local candidates.

Question 74: Can we include a permanent placement / locums conversion fee?

Answer 74: As stated in Section 7(5) "Bidder's Terms and/or Conditions," any additional Bidder terms and conditions attached to or referenced in Bidder's proposal shall not be considered part of the proposal, but shall be deemed included for informational purposes only.

Question 75: What parts, if any, of a vendor proposal, will become public information?

Answer 75: Please refer to the information provided in Section 7(10) "Confidentiality/Freedom of Information Law."

Question 76: How many vendors are currently supplying these services to SUNY Upstate Medical University?

Answer 76: There are many vendors that provide temporary medical staffing services to Upstate. Currently, there are about 20 different vendors providing these services.

Question 77: How many vendors are expected to participate in this IFB?

Answer 77: Upstate has no way of knowing how many vendors will end up submitting proposals.

Question 78: How many vendors do you anticipate will be awarded this contract?

Answer 78: Until all of the bids have been received, Upstate has no way of knowing how many vendors will be awarded a contract.

Question 79: If a bidder does not supply rates for all job titles will that result in disqualification?

Answer 79: No. As stated in Section 3(B) "Pricing," Bidders can provide a quote for any or all job titles.

Question 80: Can you give us the current rates for all job titles in this IFB?

Answer 80: There are many vendors that provide temporary medical staffing services to Upstate at different rates. Please refer to Upstate's website for information with regard to submitting a Freedom of Information Law request. <http://www.upstate.edu/foil/index.php>

Question 81: Will the rates be the same as established in the current contract or will there be an increase?

Answer 81: If your firm is awarded a contract as a result of this IFB, the rates in a new contract would be whatever your firm submits in its proposal.

Question 82: How many hours of orientation will be paid by the Agency? What is the average length of NEO?

Answer 82: As stated in Section (P) "Orientation," Upstate will pay the Successful Bidder for temporary clinical staffing orientation at the Bill Rate. However, if temporary clinical staffing provided by the Successful Bidder fail to complete NEO or if they complete NEO but do not subsequently report for work, Upstate shall not be obligated to pay the Successful Bidder for the employees' NEO time. NEO typically lasts two (2) days.

Question 83: Will the awarded contract have the same bill rates for all vendors?

Answer 83: No. Bill Rates in the contracts will likely vary based on the rates submitted by each vendor in response to this IFB.

Question 84: Is use of non NYS Certified M/WBEs subcontractors permitted for this contract - Can we use certified M/WBE subcontractor who are not registered with NYS e.g. MBE/WBE/SDB but are registered with other entities such as MWBE.com or SBA to satisfy the M/WBE requirement?

Answer 84: Only New York State Certified M/WBE's can be considered towards the 30% M/WBE Utilization Goal. It should be noted that there are many out of state businesses that have gotten NYS Certified as a M/WBE, but that said we will only consider firms that have gone through those efforts for our utilization numbers.

Question 85: Page 13, Section 4 A, item 14, 13th bullet point. Proof or Workers' Compensation is required in this section but is not listed on Page 40, Attachment 1: Bid Submission Checklist. Are we to include proof of Workers' Compensation as in Form C-105.2?

Answer 85: Bidders' proposals should be accompanied by proof of Workers' Compensation insurance

**Questions & Answers for IFB S-1166
Temporary Clinical Staffing Services**

coverage and Disability Benefits insurance coverage at the time of bid submission or shortly after the opening of bids as set forth in Section 7(28)(c) "Worker's Compensation Insurance and Disability Benefits Requirements." Form C-105.2 is listed among the acceptable certificates of proof of Workers Compensation insurance in Section 7(28)(c).

Question 86: Page 14, Section 5 B, item 8. We are a privately held company. May we provide summary financials rather than the full audited results as we have in past responses?

Answer 86: Financials are only necessary if Upstate requests them. Upstate reserves the right to request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports. If disclosure is a concern, please refer to the information contained in Section 7(10) "Confidentiality/Freedom of Information Law."

Question 87: Pages 23-24, Section 7, item 11, Minority and Women-owned Business Enterprises (M/WBE). Is bidder required to submit a utilization plan if bidder will not be utilizing subcontractors to perform the services contemplated by this IFB?

Answer 87: Yes. You must submit an M/WBE Utilization Plan. It is understood that with some contracts it is more difficult to achieve M/WBE utilization than others. Consistent with SUNY's commitment and in accordance with Article 15-A of the NYS Executive Law, contractors are required to ensure that good faith efforts are made to include meaningful participation by NYS Certified M/WBE's. The requirements apply to all SUNY contracts in excess of \$25,000 for commodities and services.

Question 88: Pages 24-25, Section 7, item 12, Equal Employment Opportunity Requirements. Is bidder required to submit an EEO staffing plan and workforce utilization plan?

Answer 88: Yes. The Bidder should submit completed M/WBE Forms 104, 107 and 108 with its bid response.

Question 89: Page 28, Section 7, item 19, State Consultant Services Reporting. Is this reporting requirement applicable to the temporary healthcare staffing services contemplated by this IFB?

Answer 89: Yes. This reporting requirement is applicable to the services contemplated by this IFB.

Question 90: Page 29, Section 7, item 26.a, Indemnification. Is this provision negotiable? Will SUNY accept changes to this provision?

Answer 90: Refer to Section 7(5) "Bidder's Terms and/or Conditions."

Question 91: Page 29, Section 7, item 27, Liability. Is this provision negotiable? Will SUNY accept changes to this provision?

Answer 91: Refer to Section 7(5) "Bidder's Terms and/or Conditions."

Question 92: Pages 32 -34, Section 7, item 28, Insurance. Is this provision negotiable? Will SUNY accept changes to this provision or will SUNY accept the language in the current agreement between bidder and SUNY?

Answer 92: Refer to Section 7(5) "Bidder's Terms and/or Conditions."

Question 93: Page 40 – 41, Section 7, item 41, Excluded Individuals/Entities. Is this provision negotiable? Specifically, will SUNY agree to remove the reference to affiliates from the indemnity provision?

Answer 93: Refer to Section 7(5) "Bidder's Terms and/or Conditions."

Question 94: Exhibit A-1. Are the requirements to submit a staffing plan, Workforce Employment Utilization Report, and MWBE Utilization Plan applicable to the services contemplated by this IFB?

Answer 94: The requirements to submit a staffing plan, Workforce Employment Utilization Report, and M/WBE Utilization Plan are indeed applicable to this particular opportunity. All SUNY institutions typically require this documentation as a part of the bid process. While necessary, some of this documentation or the associated goals may not always be reasonable based on the type of procurement. That said when a firm can show and document that they have made good faith efforts (through e-mail or phone outreach) to meet the M/WBE Utilization goal requirements of a contract for example, a partial waiver may be obtained. If you have any difficulties in regard to the aforementioned, feel free to reach out to Carl Thomas at 315-464-4657 or via e-mail at thomac@upstate.edu.

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Temporary Clinical Staffing Services**

Question 95: Exhibit B-1, Cost Worksheet. Can Advanced Practice and CRNA providers be managed through Human Resources instead of the VMS?

Answer 95: No.

Question 96: Exhibit B-1, Cost Worksheet. Is Dialysis Nursing included in the desired labor categories? If so, to which category would this be assigned?

Answer 96: No. Dialysis Nursing is not included.

Question 97: Exhibit Z, Business Associate Agreement, Section 7.1. Will SUNY agree to delete this provision?

Answer 97: Refer to Section 7(5) "Bidder's Terms and/or Conditions."

Question 98: Exhibit Z, Business Associate Agreement, Section 8.9. Will SUNY agree to make this provision mutual as is in the current BAA between bidder and SUNY?

Answer 98: Refer to Section 7(5) "Bidder's Terms and/or Conditions."

Question 99: Section 3 pages 9-13 (seems pretty straight forward) - Is Upstate interested in further content demonstrating our ability to perform and if so what would be considered best value beyond price?

Answer 99: Upstate cannot advise bidders about what further content to include with their proposals.

Question 100: How many bidders will be participating?

Answer 100: Upstate has no way of knowing how many vendors will submit bids.

Question 101: Page 17 section F. Parking – is it assigned and what is the cost per month?

Answer 101: You will have your choice of the parking garage or an off campus lot with shuttle service. The garage is available to off campus parkers on the weekend at no additional charge. The average parking fee per month is about \$90 (a little cheaper if you choose an off campus lot). This fee will cover you at either our Downtown or Community campus.

Question 102: We have local branch offices in New York State and candidates are sourced thru those offices as well as our National recruitment offices. page 26 section 13 : shall we answer "yes" ? Will New York State Businesses be used in the performance of this contract? (YES___ NO___)

Answer 102: We cannot advise you how to answer this question.

Question 103: Page 29 – Section 24: Subcontracting – does Upstate work with vendors now using subcontractors?

Answer 103: No. Not currently.

Question 104: Does Upstate release the names of all vendors awarded or participating in bidding?

Answer 104: As required under Executive Order Number 6 "Ensuring the Cost-Effectiveness of Contracts for Personal Services," Upstate will release the names of all vendors awarded a contract.

Question 105: Page 39 section 37. Overtime and Holiday Bill rate – what is the policy for working travelers on Overtime or Holidays?

Answer 105: Minimal overtime and Holidays as needed.