



New York State  
Office of Alcoholism & Substance Abuse Services  
Addiction Services for Prevention, Treatment,  
Recovery

**Developing and Managing a Pre-Admission  
Process Related to Adolescents**

Request for Proposal  
August 15, 2011

# **Request for Proposal Developing and Managing a Pre-Admission Process Related to Adolescents**

## **Expected Timetable for Key Events:**

Release Date: .....August 15, 2011  
Notification for Intent to Bid ..... 4:00 PM EST on August 29, 2011  
Closing Date for Submission of Contractor’s Questions.....4:00 PM EST on September 6, 2011  
Answers to Contractor’s Questions **on or about** .....September 13, 2011  
Closing Date for Receipt of Contractor’s Proposals .....4:00 PM EST on September 27, 2011  
Anticipated Evaluation and Selection..... October 11, 2011  
Anticipated Contractor’s to Sign Contract ..... October 13, 2011  
Anticipated Contract Approval by Office of the State Comptroller..... December 1, 2011  
Contract Term Begins..... December 1, 2011

## **All Inquiries to:**

OASAS Project No. 11004ART  
[procurements@oasas.ny.gov](mailto:procurements@oasas.ny.gov)  
Bureau of Capital Management  
Office of Alcoholism and Substance Abuse Services

## **Submission of Proposal to:**

OASAS Project No. 11004ART  
Bureau of Capital Management  
New York State Office of Alcoholism and Substance Abuse Services  
1450 Western Avenue, 4<sup>th</sup> floor  
Albany NY 12203

Please be aware that any expenses your firm incurs in the preparation and submission of the proposal(s) will not be reimbursed by the State. Your firm’s continued interest in providing service to the State of New York is appreciated.

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## **Section 1 – Introduction**

**1.1 Purpose.** This Request for Proposal (RFP) seeks proposals from established and experienced government services organizations, behavioral health care organizations, and consultants with experience in developing and managing a pre-admissions process as it relates to adolescents in need of inpatient chemical dependence services.

**1.2 Goals and Objectives.** The Office of Alcoholism and Substance Abuse Services (OASAS) broad objectives are to:

**1.2.1** Ensure that we meet current and future Federal Medicaid reimbursement criteria when we serve chemically dependent individuals who are under the age of 21 by way of certifying the appropriateness of the admissions.

**1.2.2** Ensure that we accurately assess and address the treatment needs of chemically dependent individuals who are under the age of 21 by way of screening admissions using a qualified team of professionals.

The goal of this RFP is to contract with a vendor that possesses the necessary qualifications to provide customized pre-admissions review.

**1.3 Background.** In order to qualify for Medicaid reimbursement, Federal law and regulations require that all Medicaid eligible individuals be certified as appropriate candidates for this level of care prior to admission (except in cases where there is a documented emergency need for the services). OASAS has chosen to meet this requirement by administering a pre-admissions process that is conducted by qualified professionals acting collectively as an Admission Review Team (ART).

OASAS admission process is part of an admissions procedure for Medicaid eligible services pursuant to OASAS operating regulations, Part 817 – “Residential Rehabilitation Services for Youth” (RRSY) (see Attachment No. 2). The ART will certify that patients meet the admission criteria outlined in Part 817. For more information on this operating regulation, please see: <http://www.oasas.ny.gov/admin/ncf/rrsy.cfm>.

OASAS operates eleven (11) adolescent programs under Part 817 regulations. These regulations are based on “Inpatient Psychiatric Facility Services for Individuals under 21 Years of Age”, a federally participating Medicaid service category. These regulations are available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>.

### **1.4 Designated Contact.**

Ms. Maureen D. Majkut, Contract Management Specialist I  
New York State Office of Alcoholism and Substance Abuse Services  
Bureau of Capital Management  
1450 Western Avenue  
Albany, NY 12203-3526  
518/485-1024 or 518/485-8041 (fax)  
E-mail: [maureenmajkut@oasas.ny.gov](mailto:maureenmajkut@oasas.ny.gov)

**1.5 Minimum Qualifications.** A qualified vendor will be a government service organization, behavioral healthcare organization, or consultant with experience in developing and administering a pre-certification process for medical or behavioral health services. A qualified vendor will be able to demonstrate such experience by providing a list of past and/or current clients for which this type of service has been developed/administered, and must be able to initiate ART services within one month of execution of the contract.

## **Section 2 - Proposal Submission**

**2.1 Contractor Notification of Intent to Bid.** Contractors are required to notify OASAS of the Contractor's interest in bidding by **4:00PM EST, August 29, 2011** by Email. Only Contractors who notify OASAS by this deadline will receive additional bid information and have their bid proposals accepted. Email notification should be sent to:

[procurements@oasas.ny.gov](mailto:procurements@oasas.ny.gov)

Using a subject line of "OASAS Project No. 11004ART"

**2.2 Questions.** There will not be a Contractors' conference prior to submission of proposals. All questions concerning the proposal must be submitted by Email to [procurements@oasas.ny.gov](mailto:procurements@oasas.ny.gov) with a subject line of "OASAS Project No. 11004ART". All questions should cite the proposal section and paragraph number. Written questions will be accepted until **4:00 p.m. EST, September 6, 2011**.

The questions and answers to all questions will become part of this project definition and any contract. Answers to questions will be sent to Contractors who have notified OASAS of their Intent to Bid on or about **September 13, 2011**.

**2.3 Proposal Format and Content.** The Contractor's Proposal for this project must be composed and presented in the following format:

**2.3.1 Administrative Proposal consisting of:**

- a. A cover letter on your organization's letterhead. This cover letter should identify your Federal Employer Identification Number (FEIN) and Dunn and Bradstreet Number (DUNS) and should be signed by a representative of your executive management team, including title of authorized signatory, telephone and fax numbers, and e-mail address.
- b. Name, title, telephone number and e-mail address of Contractor's employee assigned to be the prime contact for the award, function in the company and number of years of service with the Contractor.
- c. The Contractor shall submit satisfactory evidence that it has previous experience, adequate financial resources and organizational capacity, as herein specified, to perform the type, magnitude, and qualify of work specified.
- d. Original executed Attachments numbered four through eight.

**2.3.2 Technical Proposal consisting of:**

- a. Title page and table of contents.
- b. Project scope overview.
- c. A resume for each candidate recommended for this project.
- d. Contractor's experience.
- e. Contractor's references (minimum of two) identifying company name, individual overseeing project, telephone number, firm for whom similar services were provided within the last two years. The references must have first-hand knowledge of the firm's ability to perform the type of services requested. The purpose of the reference checks will be to confirm the experience of the Contractor and Contractor's employees as OASAS deems necessary.

**2.3.3 Budget Proposal:** Budget information shall be supplied using Exhibit No. 1 – Budget Proposal, of this procurement.

**2.4 Instructions for Proposal Submission and Deadline.** Administrative, Technical, and Budget Proposals must be submitted separately in sealed packages before **4:00 PM, EST, on September 27, 2011 to:**

OASAS Project No. 11004ART  
Procurements  
Bureau of Capital Management  
1450 Western Avenue  
Albany, NY 12203-3526

Late proposals will not be considered for award.

**2.4.1 Submission of Administrative Proposal:**

Each Contractor must submit one (1) original and three (3) copies of the Administrative Proposal (paper copy). The original proposal should be clearly marked “Original” on the cover page. Submit the original and copies in a sealed package separate from the Technical and Budget Proposals. Clearly mark the outside of your sealed Administrative Proposal and each original and photocopy as “OASAS Project No. 11004ART Administrative Proposal submitted by (Contractor’s name).”

**2.4.2 Submission of Technical Proposal:**

Each Contractor must submit one (1) original and three (3) copies of the Technical Proposal (paper copy). The original proposal should be clearly marked “Original” on the cover page. Submit the original and copies in a sealed package separate from the Budget and Administrative Proposals. Clearly mark the outside of the sealed Technical Proposal and each original and photocopy as “OASAS Project No. 11004ART Technical Proposal submitted by (Contractor’s name).”

**2.4.3 Submission of Budget Proposal:**

Each Contractor must submit one (1) original and three (3) copies of the Cost Proposal (paper copy). The original proposal should be clearly marked “Original” on the cover page. The preparer and an official authorized to bind the prospective Contractor shall sign the Budget Proposal. Submit the original and copies in a sealed package separate from the Technical and Administrative Proposals. Clearly mark the outside of your sealed Budget Proposal and each original and photocopy as “OASAS Project No. 11004ART Budget Proposal submitted by (Contractor’s name).”

Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, Email or other transmission) will not be accepted.

## **Section 3 – Administrative Information**

**3.1 Issuing Office.** This RFP is issued by the Office of Alcoholism and Substance Abuse Services which is responsible for the requirements specified herein and for evaluating all proposals submitted.

**3.2. Method of Award.** Award will be made on the basis of “Best Value”. “Best Value” is defined as the basis for awarding this contract for services to Contractor which optimizes quality, cost, technical and efficiency among responsive and responsible Contractors. Such basis shall reflect, whenever possible, objective and quantifiable analysis.

All provisions of this RFP and resulting contract award are contingent upon the availability of New York State funds.

**3.3 Term of the Contract.** The contract will be awarded for a period of five years.

**3.4 Funding.** Delay in authorization of funds for the services being solicited herein may result in a change in the effective date of the contract.

**3.5 Price.** For purposes of this RFP, Contractor shall enter the Budget for Year 1 through Year 5 on the *Exhibit 1 – Budget Proposal*.

**3.6 Method of Payment.** Payments by the State shall be made upon the completion of the services herein provided for to the satisfaction of OASAS. Invoices shall be submitted to:

New York State Office of Alcoholism and Substance Abuse Services  
Bureau of Financial Management  
1450 Western Avenue, 5<sup>th</sup> floor  
Albany NY 12203

**3.7 Voucher Preparation.** The voucher or invoice will contain the Contract ID Number (i.e: C00XXXX). The following information must be included on all invoices. Failure to do so may result in delay of payment and/or non-payment of invoice until such information is provided.

- Contractor name and address
- Contact person name with phone number
- Fax number (if applicable)
- E-mail address (if applicable)

**3.8 Electronic Payment.** Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices.

The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptrollers website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by phone at (518) 486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new Statewide financial system, the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors 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.

**3.9 Contractors Responsibilities.**

**3.9.1** The Successful Contractor shall perform his/her responsibilities in accordance with all applicable State and Federal statutes and regulations.

- 3.9.2** The Successful Contractor agrees to defend, indemnify, and hold harmless the State of New York and OASAS against any and all losses, damages, costs and expenses which it may hereafter suffer or pay out by reason of any claims, actions and rights of action in law or equity, valid or invalid, arising out of damage occurring to, suffered by any person or persons, caused in whole or in part, by the Successful Contractor, any of its officers, employees, agents or representatives or any person, firm or corporation directly or indirectly employed or engaged by the Successful Contractor.
- 3.9.3** The Successful Contractor agrees that the resulting contract may not be assigned, transferred, conveyed, or the work subcontracted without the prior written consent of OASAS.
- 3.9.4** In submitting a proposal, the Contractor(s) covenant that the Contractor shall not make any claims for, or have any right to, damages for any misinterpretation or misunderstanding of the specifications or because of any lack of information.
- 3.9.5** Contractor shall, upon request, submit satisfactory evidence that it has had previous experience and possesses adequate financial resources and organization as herein specified to perform the type, magnitude, and quality of work specified.

**3.10 Non-responsibility Determinations.** By signing this RFP, the Contractor certifies that all information provided as a result of this RFP is complete, accurate and true with regard to prior non-responsibility determinations within the past four years based on (i) impermissible contacts or other violations of SFL §139-j, or (ii) the intentional provision of false or incomplete information to a government entity. In the event it is determined after award that the certification provided was intentionally false or intentionally incomplete the contract may be terminated without notice by OASAS.

**3.11 Employee Information Required To Be Reported.** Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning contract employees working under State agency service and consulting contracts. The amendments also require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), and the Department of Civil Service (CS). These amendments became effective June 19, 2006.

To meet these requirements, the Contractor agrees to complete:

- A. Form A - Contractor's Planned Employment Form,** if required. The State agency using the consultant services is required to submit Form A to the Office of the State Comptroller.
- B. Form B - Contractor's Annual Employment Report.** Form B must be submitted each year the agreement is in effect, to capture the Contractor's historical information detailing actual employment information for the most recently concluded state fiscal year (April 1 through March 31) and every year thereafter. For each year of the contract, by May 15, the Contractor agrees to report the following information to OASAS. For each covered consultant contract in effect at any time between the preceding April 1<sup>st</sup> through March 31<sup>st</sup> fiscal year or for the period of time such contract was in effect during such prior State fiscal year Contractor reports the:
- Total number of employees employed to provide the consultant services for each employment category.
  - Total number of hours worked by such employees for each employment category.
  - Total compensation paid to all employees that performed consultant services under such Contract for each employment category.\*

*\*NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered*

*consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.*

Contractor agrees to simultaneously report such information to the Department of Civil Service and the Office of the State Comptroller as designated below:

**Department of Civil Service**

Alfred E. Smith Office Building  
Albany, NY 12239  
Attn: Counsel's Office

**Office of the State Comptroller**

Bureau of Contracts  
110 State St., 11<sup>th</sup> Floor  
Albany, New York 12236  
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual employee names or social security numbers are set forth on a document, the State agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the State Comptroller's Bulletin G-226 <http://www.osc.state.ny.us/agencies/gbull/g-226.htm> regarding the Contractor Consultant Law requirements and report Forms A and B.

**3.12 OASAS Responsibilities.**

- 3.12.1** OASAS' interpretation of specifications contained herein shall be final and binding upon the Successful Contractor.
- 3.12.2** OASAS shall make no allowances or concession to the Successful Contractor for any alleged misunderstanding or deception because of quantity, quality, character, location, or other conditions.
- 3.12.3** The quality of services shall be subject to inspection by OASAS at any time. Should it be found that quality of services being performed is not satisfactory, and that the requirements of the specifications are not being met, OASAS acting on its own behalf, may terminate the contract, and employ another Contractor to fulfill the requirements of the contract.
- 3.12.4** OASAS reserves the right to terminate the Successful Contractor's provision of services any time that it determines that the Successful Contractor is unable or incapable of performing the work to OASAS' satisfaction.

**3.13 Debriefing Information.** Unsuccessful Contractors will be notified by a letter of the conditional award and possibility that a failed negotiation could result in an alternative award. Contractors will be accorded fair and equal treatment with respect to their opportunity for debriefing. Debriefings will also be offered, although the discussion will be limited to only the evaluation results as they apply to the proposal of the Contractor receiving the debriefing.

**3.14 Inspection of Books.** The Successful Contractor shall make available for inspection and audit by the State or its designee, during regular business hours, separate and uniform books and complete records pertaining to the service as described herein.

- 3.14.1** The Successful Contractor shall promptly offer and make available to the State any internal (company) audits relating to the contracted services.

## 4. Evaluation and Selection

### **4.1 Evaluation Methodology/Process**

The technical and financial components of the proposal will be evaluated separately and scored using the weight assignments below:

- Technical Component = 75%
- Financial Component = 25%

### **4.2 Review of Proposals for Completeness and Accuracy**

The proposals will be reviewed to ensure that all required forms were submitted and properly completed.

**4.3 Technical Proposal.** The Technical Proposal must contain the following sections and be organized as specified.

#### **4.3.1 Organizational Summary.** (Scoring Weight – 10 Points)

The Vendor should be a Government Services Organization, Behavioral Health Care Organization or Consultant, with experience in managing a pre-admissions process for chemical dependency services.

#### **4.3.2 The Team.** (Scoring Weight – 15 points)

The ART team will be evaluated based on:

- A. The Team will include a physician, a Certified Social Worker, and a New York State Credentialed Alcoholism and Substance Abuse Counselor.
- B. The physician will be a pediatrician, with experience in adolescent chemical dependence treatment, preferably specializing in adolescent medicine, and/or an ASAM certified physician with experience in adolescent treatment, and/or a child psychiatrist, preferably with chemical dependence treatment experience.
- C. The Certified Social Worker will have a minimum of three (3) years of experience in working with adolescents in a behavioral health setting and/or education setting.
- D. The CASAC will have a minimum of three (3) years experience working with chemically dependent adolescents.

#### **4.3.3 The Process.** (Scoring Weight – 25 points)

The admission review process will be evaluated based on experience in managing a pre-admissions process for chemical dependency services:

- A. The members of the team will be routinely available during normal business hours.
- B. The ability of the team to make a determination of the candidate's appropriateness for admission and communicate the results within 48 hours of having received the pre-admission documentation from the OASAS provider.
- C. The ability of the team to resolve internal conflicts in determination and communicate results within an additional 24 hours.
- D. The ability of the team to respond to provider's questions and deliver results to providers within one (1) business day of receiving the inquiry.
- E. The ART will be up and running within one (1) month of the contract being signed.

- F. The Vendor will have worked with OASAS providers to have computerized the transmission of required documentation and the final review/approval process within three (3) months.
- G. The Team's ability to make 30 – 50 reviews per week; 1,650 in the first year; and 2,450 in the third year.

**4.3.4 Information and Training Needs.** (Scoring Weight – 25 points)

The applicant has the necessary capabilities, as evidenced by the ability to:

- A. Create and manage the flow of the data through secure electronic means, in conformance with 42 CFR and HIPPA compliance confidentiality standards.
- B. Assess/evaluate the quality of the material submitted by providers to ensure informed and appropriate clinical determinations.
- C. Report, on a monthly basis, any issues regarding quality of materials received from providers.
- D. Maintain ART data/documentation for a period of seven (7) years.
- E. Train providers and the ART review staff to the admission and review process.

**4.4 Budget Proposal.** (Scoring Weight - 25 points)

The Budget Proposal identifies the Contractor's annual cost for providing services as identified in this RFP. The Applicant must submit, in the format specified in *Exhibit 1 – Budget Proposal*, the costs associated with each function in addition to an overall project cost. These costs should incorporate all Applicant expenses associated with providing and completing all work and services within this RFP.

**4.5 Scoring.** Following the completion of the Technical Proposal and Budget Proposal Evaluation processes, a composite score will be assigned to each submission. The composite score will be comprised of a technical score, weighted at 75 percent, and a cost score, weighted at 25 percent.

**4.6 Notification of Award.** The Contractor will be advised of selection by OASAS through the issuance of a Notification of Award Letters. Unsuccessful Contractors will be notified by letter of the conditional award.

## **Section 5 – Scope of Work**

**5.1 Admission Review Team (ART).** The ART shall use the requirements delineated in Section 817.3 of Part 817 regulations to review each individual candidate to determine their appropriateness for admission. If deemed appropriate for admission, the ART shall certify that the individual, in meeting the OASAS admission standards, is in need of this level of residential treatment for chemical dependence. The ART will operate in accordance with the procedures established/approved by OASAS and shall at minimum include a physician, a Certified Social Worker and a New York State Credentialed Alcoholism and Substance Abuse Counselor (CASAC).

The ART will be expected to certify the candidate's appropriateness for admission within 48 hours of having received the pre-admission documentation from the OASAS provider. The OASAS provider will be required to document the following information for the ART:

- 5.1.1** The age and date of birth of the individual presenting for admission to RRSY. At the discretion of the ART, the provider may be asked to provide a copy of the individual's birth certificate or other proof of age.
- 5.1.2** That the individual appears to be free from communicable diseases.

- 5.1.3 That the individual appears to NOT need hospitalization or other crisis care.
- 5.1.4 Justification for the need of residential treatment services, which includes a list of all referral sources and previous treatment history, including history of prior treatment failure.
- 5.1.5 Documentation as to the Level of Care Determination, using LOCDTR or another OASAS approved protocol.
- 5.1.6 Upon receipt of the required information, each of the members of the ART will individually review and approve or disapprove the patient for admission. Should there be a conflicting determination, each team member may ask the provider for additional information and have an additional 24 hours to reach a consensus and make a determination.

**5.2 ART Activities.** The selected organization shall:

- 5.2.1 Have available on a daily basis, during normal business hours, a physician, a certified social worker, and a credentialed alcoholism and substance abuse counselor to serve on the admission review team. It is expected that the review by each team member will perform between 20 and 40 reviews per week and that each review will take each team member approximately 15 minutes to complete.
- 5.2.2 Ensure that each review, and resulting approval or denial is completed and communicated back to the provider within 48 hours of the receipt of the review request from the provider.
- 5.2.3 Use an OASAS prescribed format for the Pre-Admission materials that will need to be submitted by the providers to the ART, or work with staff from the OASAS Bureau of Treatment to develop a mutually acceptable Pre-Admission Materials format. (See Exhibit 3)
- 5.2.4 Report review results to providers and respond to questions they may have in regard to the review within one business day of receiving the inquiry.
- 5.2.5 Make all necessary paperwork available to providers regarding the appeals process and cooperate with the OASAS administered appeals process.
- 5.2.6 Create and manage the flow of the data through secure electronic means, in conformance with 42 CFR and HIPPA compliance confidentiality standards.
- 5.2.7 Assess/evaluate the quality of the materials submitted by providers to ensure that ART members can make informed and appropriate clinical determinations and report any issues regarding quality of materials received to OASAS on a monthly basis.
- 5.2.8 Train the providers and the ART review staff as to the admission and review process in accordance with the regulations and procedures.
- 5.2.9 Work with OASAS to provide on-going training and technical assistance to providers regarding the development of evidenced based screening, assessment and treatment.
- 5.2.10 Host an annual Clinical Supervisors Institute in conjunction with OASAS and conduct a minimum of quarterly conference calls with the Clinical supervisors in the adolescent residential program.
- 5.2.11 Provide for regional trainings on a yearly basis and biannual statewide meeting of Adolescent Residential Providers.
- 5.2.12 Report to OASAS on a quarterly basis any issues and/or concerns regarding the ART process.
- 5.2.13 Maintain ART data/documentation for a period of seven years.

**5.3 Experience.** A qualified vendor will be a government service organization, behavioral healthcare organization, or consultant with experience in developing and administering a pre-certification process for medical or behavioral health services. A qualified vendor will be able to demonstrate such experience by

providing a list of past and/or current clients for which this type of service has been developed and/or administered, and must be able to initiate ART services within one month of execution of the contract.

A qualified vendor will have had previous experience in developing and administering a pre-certification for medical or behavioral health services and must be able to demonstrate the capacity to hire or contract with qualified staff needed to make up the admissions review team. OASAS reserves the right to review the qualifications of the Admission Review Team and administrative staff.

**5.4 Performance.** OASAS anticipates that approximately 2,000 ART reviews will need to be completed annually.

**5.5 Contractor's Responsibilities.** The successful vendor will:

- 5.5.1 have the ART operational within 30 days of execution of the contract;
- 5.5.2 work with the OASAS providers to have computerized the transmission of required admission documentation and the final review/approval process within three months; and
- 5.5.3 be able to demonstrate their ability to complete each review within 48 hours of its receipt from the provider.

**5.6 Quality Control.** Prior to implementation, OASAS reserves the right to review and approve any changes to the documentation requirements. OASAS will review, on a regular basis, a sample of ART reviews completed for timeliness and completeness.

**5.7 Qualification of Personnel.** Vendors will be expected to sign an attestation confirming that all staff assigned to the ART meets the qualifications outlined below. In addition, OASAS reserves the right to review qualifications of staff assigned to the ART.

- 5.7.1 A physician qualified to serve on the ART will be a pediatrician, with experience in adolescent chemical dependence treatment preferably specializing in adolescent medicine and/or an American Society of Addiction Medicine (ASAM) certified physician with experience in adolescent chemical dependence treatment and/or a child psychiatrist, with chemical dependence experience.
- 5.7.2 A Certified Social Worker qualified to serve on the ART will have a minimum of three years of experience in working with adolescents in a behavioral health setting and/or educational setting.
- 5.7.3 A Credentialed Alcoholism and Substance Abuse Counselor (CASAC) qualified to serve on the ART will have a minimum of three years experience working with chemically dependent adolescents.
- 5.7.4 OASAS retains the right to request any additional information pertaining to the vendor's ability and qualifications, as well as the procedures used to accomplish all ART responsibilities.

## **Section 6 – Contract Clauses and Requirements**

**6.1 Procurement Lobbying Language.**

- 6.1.1 Background. State Finance Law §139-j(6) requires that a Governmental Entity incorporate a summary of its policy and prohibitions regarding permissible Contacts during a covered procurement. The following model language may be customized for inclusion in a solicitation.
- 6.1.2 Instructions. In addition to attaching a copy of relevant rules and regulations and guidelines and procedures, a Governmental Entity must include a summary in its proposals, bid documents or

specifications for all Procurement Contracts. Such language should be incorporated into the relevant documents.

Pursuant to State Finance Law §§139-j and 139-k, this solicitation [or use identifier that is pertinent such as “Invitation for Bid” or “Request for Proposal” etc.] includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/Contractor during the procurement process. An Offerer/Contractor is restricted from making contacts from the earliest notice of intent to solicit offers [or use identifier that is pertinent such as “Invitation for Bid” or “Request for Proposal” etc.] through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller (“restricted period”) [conform for pertinent government entity] to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this solicitation [or conform to whatever location is used to identify designated staff]. Governmental Entity employees [conform for pertinent government entity] are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Contractor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/Contractor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found [conform for how will provide copies of the rules, regulations, guidelines or procedures].

**6.2 Contractors Insurance Requirements.** The Successful Contractor agrees that, without expense to the State, it will procure and will maintain, until final acceptance by the Agency’s designee of the work covered by this proposal and the contract, insurance of the kinds and in the amount hereinafter provided, with insurance companies authorized to do such business in the State of New York, covering all operations under this proposal and the contract. Before commencing the work, the Successful Contractor shall either name the State of New York, its officers and employees as additional insurers or shall make other arrangements suitable to the Agency in lieu of such naming, in form satisfactory to said Agency, showing that it has complied with the requirements of this section, which certificate or certificates shall name the State of New York, its officers and employees as additional insurers and shall state that the policies shall not be changed or canceled until thirty days written notice has been given to said Agency. The kinds of amounts or required insurance are:

- A. A policy covering the obligations of the Successful Contractor in accordance with the provisions of Chapter 41, Laws of 1914 as amended, known as the Worker’s Compensation Law, and the contract shall be void and of no affect unless the Successful Contractor procures such policy and maintains it until acceptance of the work.
- B. Policies and Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified each with limits of liability of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in anyone occurrence and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons on anyone accident, and not less than \$500,000 for all damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period:

1. Successful Contractor's Liability Insurance issued to and covering the liability of the Successful Contractor with respect to all work performed by it under this proposal and the contract.
2. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the Successful Contractor or by its subcontractors, including omissions and supervisory acts of the State.

**6.3 Regulations and Guidelines.** The Contractor must meet all applicable regulations and guidelines (i.e., federal, state, county, city, Commission on Accreditation of Rehabilitation Facilities), relative to the service provided, if applicable.

*A Contractor's inability to comply with all applicable guidelines will result in automatic disqualification from consideration.*

The Contractor understands and agrees that the contracted service under its control will be operated in compliance with all applicable codes pertaining to the contracted service, and will immediately take corrective action, at its own expense, which is required by New York State or any other applicable federal, county or local codes pertaining to the contracted service.

The Contractor shall enter into a written agreement with OASAS ensuring the confidentiality of patient records and information in accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records. Failure on the part of the Contractor to comply with Federal rules and regulations on the confidentiality of patient records would be grounds for the State to terminate the contract with the Contractor.

**6.4 Tax and Finance Clause.** TAX LAW § 5-A: Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

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

Contractor certification forms and instructions for completing the forms are attached to this RFP. Form 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 ST-220-TD must be filed with DTF.

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

Vendors may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and

relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site <http://www.tax.ny.gov>.

**6.5 Important Notice Regarding NYS Freedom of Information Law (FOIL).** The Office of Alcoholism and Substance Abuse Services is required to provide public access to certain documents it maintains. The Freedom of Information Law, however, Section 87.2 (d) of the Public Officers Law, allows exception for trade secret information which, if disclosed, could cause substantial injury to the competitive position of the Contractor's enterprise.

Should a Contractor believe that certain portions of its proposal qualify for trade secret status; the Contractor must submit in writing, accompanying its proposal, explicit justification and cite the specific portions of the proposal for which an exemption is being requested. Contractors requesting an exemption for trade secret status will be notified in writing of the agency's determination of their request.

***Requests for exemptions for entire proposals are not permitted, and will be grounds for considering the submission to be non-responsive to this solicitation and for disqualification of the Contractor.***

**6.6 Period of Contract Award.** It is the intention of OASAS to enter into a contract for a period of five (5) years from on or about **December 1, 2011 through November 30, 2016**, following approval by the Attorney General and the Office of the State Comptroller. The effective date of the contract resulting from this RFP is subject to revision at the sole discretion of the State of New York.

**6.7 Procurement Rights.** OASAS reserves the right to:

- 6.7.1** Prior to the *proposal opening*, amend or modify the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- 6.7.2** Change any of the scheduled dates.
- 6.7.3** Prior to the bid opening, direct Contractors to submit proposal modifications addressing subsequent RFP amendments or modifications.
- 6.7.4** Withdraw the RFP at any time, at the agency's sole discretion.
- 6.7.5** Make an award under the RFP in whole or in part.
- 6.7.6** Reject any or all proposals received in response to the RFP.
- 6.7.7** Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Contractors.
- 6.7.8** Waive any requirements that are not material.
- 6.7.9** Disqualify any Contractor whose conduct and/or proposal fails to conform to the requirements of the RFP.
- 6.7.10** Disqualify a Contractor from receiving the award if such Contractor, or anyone in the Contractor's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- 6.7.11** Reject proposals that fail to meet mandatory requirements.
- 6.7.12** Make inquiries, at OASAS discretion and by any means it may choose, into the Contractor's background or statements made in the proposal to determine the truth and accuracy of statements made by Contractor.
- 6.7.13** Use proposal information obtained through site visits, management interviews and the state's investigation of a Contractor's qualifications, experience, ability or financial standing, and any material

or information submitted by the Contractor in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP.

- 6.7.14** Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Contractor's proposal and/or to determine a Contractor's compliance with the requirements of the solicitation.
- 6.7.15** Utilize any and all ideas submitted in the proposals received, unless those ideas are subject to a legal patent or other proprietary rights.
- 6.7.16** Elect to award a contract to one responsive and responsible Contractor.
- 6.7.17** Negotiate with the Successful Contractor within the scope of the RFP in the best interests of the state.
- 6.7.18** Should OASAS be unsuccessful in negotiating a contract with the selected Contractor within a reasonable time, as determined by OASAS, then OASAS may begin contract negotiations with the next ranked Contractor in order to serve the best interest of the State of New York.
- 6.7.19** Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening.

**6.8 Termination.** The State and the Contractor agrees and stipulates that OASAS shall have the sole right, in its discretion, at any time to terminate a resulting contract, or any unit reporting thereof with cause, by giving 30 day written Notice of Termination to the Contractor, and that such Notice of Termination shall in no event constitute or be deemed a breach of this Agreement and no liability shall be incurred by or arise against the State, its agents and employees therefrom.

The State shall have the right to terminate the contract early for:

- 6.8.1** unavailability of funds;
- 6.8.2** cause; or
- 6.8.3** convenience.

The State may only invoke its right to terminate for convenience provided that the State has given written notice to the Contractor no later than 30 days or more prior to the date of termination, except with respect to contracts that gives the State a general right to terminate at any time.

**6.9 NYS Vendor Responsibility Questionnaire.** The New York State Office of the State Comptroller (OSC) has issued Vendor Responsibility: Standards, Procedures and Documentation Requirements which are intended to provide reasonable assurance that a proposed contractor is a responsible vendor. New York State Agencies are required to undertake an affirmative review of the responsibility of any contractor to whom they propose to make a contract award. Such review is designed to provide reasonable assurances that the proposed contractor is responsible. A responsibility determination can and should involve a review of the following four major categories:

- 6.9.1** legal authority,
- 6.9.2** integrity,
- 6.9.3** financial and organizational capacity, and
- 6.9.4** previous contract performance.

OASAS recommends that vendors file a required Vendor Responsibility Questionnaire online via the New York State VendRep System. However, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at (866) 370-4672 or (518) 408-4672 or via email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) or may contact OASAS or OSC's Help Desk for a copy of the paper form.

If paper format is chosen, the printed Vendor Responsibility Questionnaire must be signed and returned with this contract. The online format may be submitted electronically through the VendRep system. Regardless of which format is chosen, the questionnaire will be used by OASAS to make a responsibility determination for the purposes of this contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OASAS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**6.10 Ethics Compliance.** All Bidders/Contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

**6.11 Indemnification.** The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, or agents, of any contract resulting from this solicitation and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this contract and covenants and agrees to indemnify and hold harmless the State of New York, its agents, officers and employees, from any and all claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this solicitation, including negligence, active or passive or improper conduct of the Contractor, its officers, agents, or employees, or the failure by the Contractor, its officers, agents, or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

**6.12 Contact With Employees.** Pursuant to State Finance Law §§139-j and 139-k, this RFP includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/Contractor during the procurement process. An Offerer/Contractor is restricted from making contact from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OASAS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Contractor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/Contractor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at the following web address: <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

From the issuing date of this RFP until a determination is made regarding the selection of the Successful Contractor, all Contractors contact with OASAS and relative to this procurement must be authorized by OASAS and Contractors may not approach OASAS' personnel with offers of employment from the issuing date of this

RFP until a determination is made regarding the selection of the Successful Contractor unless the intent to offer employment has been approved in advance by OASAS.

**6.13 Confidentiality and Nondisclosure.** Contractors' acknowledge that all information and/or documentation pertaining to OASAS and when applicable, its claimants or its constituents, is confidential to the extent provided by law and may not be used for any purpose other than for this RFP. Any other use of or release to any party or parties of OASAS confidential information/documentation without the prior written consent of OASAS shall constitute a breach of this admitted confidentiality and may result in the disqualification of the Contractors from this procurement or other sanctions as determined by OASAS.

**6.14 Subcontracting.** No subcontracting will be allowed.

**6.15 Public Announcement.** Public announcements or news releases pertaining to this proposal or contract shall not be made public without prior approval from OASAS.

**6.16 Acceptance.** The proposals shall be submitted with the understanding that only the acceptance in writing by the Associate Commissioner, Division of Administration or a designated duly authorized representative with the approval of the Attorney General, the Office of the State Comptroller and, when appropriate, the Division of the Budget, shall constitute a contract between the Contractor and the State of New York.

**EXHIBIT 1**  
**Budget Proposal**  
**Admission Review Team**  
**Period: 12/01/2011 through 11/30/2016**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
	<b>12/01/11- 11/30/12</b>	<b>12/01/12- 11/30/13</b>	<b>12/01/13- 11/30/14</b>	<b>12/01/14- 11/30/15</b>	<b>12/01/15- 11/30/16</b>
<b>Personnel</b>					
Manager (Quality & Standards Manager)					
Social Worker					
CASAC					
Physician					
Admin Asst.					
IT					
<b>Sub-Total</b>					
<b>Fringe @ 24%</b>					
<b>Sub-Total</b>					
<b>Non-Personnel</b>					
Printing/Duplicating					
Postage					
Supplies					
Travel/Site Visits					
Computers					
CMHC					
Phone					
Annual Conference					
Regional Focus Groups and Workshops					
<b>Sub-Total</b>					
<b>Indirect @ 15%</b>					
<b>Sub-Total</b>					
<b>Total</b>					

Prepared by \_\_\_\_\_

Date \_\_\_\_\_

Approved by \_\_\_\_\_

Date \_\_\_\_\_

# ATTACHMENT NO. 1

## CHEMICAL DEPENDENCE RESIDENTIAL REHABILITATION SERVICES FOR YOUTH TITLE 14 NYCRR PART 817

Effective August 30, 2006  
Amended February 18, 2009

[Statutory Authority: Mental Hygiene Law Sections 19.07(e), 19.09(b), 19.15(e), 19.40, 32.01, 32.07(a) and 32.09]

**Notice: The following regulations are provided for informational purposes only. The Office of Alcoholism and Substance Abuse Services makes no assurance of reliability. For assured reliability, readers are referred to the *Official Compilation of Rules and Regulations*.**

### Section

- [817.1 Legal base](#)
- [817.2 General service standards](#)
- [817.3 Admission procedures](#)
- [817.4 Post admission procedures](#)
- [817.5 Record keeping](#)
- [817.6 Quality improvement and utilization review](#)
- [817.7 Medical policy and services](#)
- [817.8 Staffing](#)
- [817.9 Restraint and seclusion prohibited](#)
- [817.10 Severability](#)

### Section 817.1 Legal base

- (a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to adopt standards including necessary rules and regulations pertaining to chemical dependence services.
- (b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.
- (c) Section 19.15(e) of the Mental Hygiene Law authorizes the Commissioner to implement programs of children and youth.
- (d) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to issue operating certificates for the provision of chemical dependence services.

(e) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(g) Section 32.09 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for services that treat chemically dependent individuals.

### **Section 817.2 General service standards**

(a) The governing authority shall determine and establish written policies, procedures and methods governing the provision of services to patients which shall include a description of each service provided, including procedures for making appropriate referrals to and from other services when necessary. These policies, procedures, and methods, which require review and approval by the governing authority, shall address, at a minimum, the following:

- (1) admission, retention and discharge, including specific criteria relating thereto, as well as transfer procedures;
- (2) level of care determinations, comprehensive evaluations, progress notes, treatment plans, and placement services;
- (3) staffing plans, including the use of volunteers;
- (4) the provision of medical services, including screening and referral for associated physical or psychiatric conditions;
- (5) the determination of prices and/or fees for services rendered;
- (6) infection control;
- (7) public health education and screening with regard to tuberculosis, sexually transmitted diseases, hepatitis, and HIV and AIDS prevention and harm reduction;
- (8) cooperative agreements with other chemical dependence service providers and other providers of services that the patient may need;
- (9) a requirement that if acupuncture is provided as an adjunct to the services provided by the service provider, it must be provided in accordance with Part 830 of this Title;
- (10) a requirement that when HIV and AIDS education, testing and counseling are provided, such services must be provided in accordance with Article 27-F of the Public Health Law and Part 832 of this Title;
- (11) the use of alcohol and other drug screening tests, such as breath testing, urine screening and/or blood tests;
- (12) medication;
- (13) quality improvement and utilization review;
- (14) clinical supervision and related procedures;
- (15) procedures for emergencies;
- (16) incident reporting and review;

(17) record keeping procedures which ensure that documentation is accurate, timely, prepared by appropriate staff, and in conformance with the federal confidentiality regulations contained in 42 *Code of Federal Regulations* Part 2 and the federal *Health Insurance Portability and Accountability Act (HIPAA)* at 45 *Code of Federal Regulations* Parts 160, 162 and 164; and

(18) personnel.

(b) The service provider shall have as its goals:

(1) the promotion and maintenance of abstinence from alcohol and other mood-altering drugs or substances except those prescribed by a physician, physician's assistant, or nurse practitioner; however, if a service objects to a patient's continued use of such prescribed drugs or substances, the service shall document each of the following: (i) obtain a signed consent form in accordance with the requirements of 42 *Code of Federal Regulations* Part 2 which authorizes the release of patient identifying information to the physician, physician's assistant, or nurse practitioner who prescribed the drug or substance to the patient ("the prescribing professional"); (ii) consult with the prescribing professional to ascertain their knowledge and awareness of the patient's history of chemical dependence, and if the prescribing professional is unaware of the patient's history of chemical dependence, inform the prescribing professional accordingly; and (iii) after the required consultation in (ii) above, if the prescribing professional believes that the patient should be permitted to continue to use the drug or substance, the patient must be permitted to continue to use the drug or substance;

(2) the improvement of functioning and development of coping skills necessary to enable the patient to be safely, adequately and responsibly treated in the least intensive environment; and

(3) the development of individualized plans to support the maintenance of recovery, attain self-sufficiency, and improve the patient's quality of life.

(c) service providers shall provide, at a minimum, the following services and procedures as clinically indicated and specified in the individualized treatment plan:

(1) Clinical services

(i) Counseling services

(a) individual counseling which must be provided at least twice per week, for a minimum aggregate of ninety minutes with no session shorter than thirty minutes duration, by a clinical staff member (the patient's primary counselor must provide at least one such service each week) in a private session which reviews the individual patient's progress in relation to the goals contained in the individualized treatment plan or addresses other clinical issues which may arise during the course of treatment;

(b) group counseling which must be provided at least twice per week and in groups of no more than 12 patients; and

(c) individual family counseling and multifamily counseling, both as appropriate.

(ii) Recovery support services must be provided at least once per week and may include:

(a) chemical dependence awareness and relapse prevention;

(b) education about, orientation to, and the opportunity for participation in, available and relevant self-help and sober/peer support groups;

(c) HIV and AIDS, hepatitis C, tuberculosis, and other communicable diseases education, risk assessment, supportive counseling and referral;

(d) life skills training;

- (e) holistic health approaches;
- (f) socialization skills;
- (g) case management/community support services; and
- (h) activities therapy.

(2) Educational assessment and educational services, as appropriate and as required by law, either directly or by arrangement with local school districts.

(3) Vocational assessment and vocational services.

(4) Active and quiet recreational services must each be provided at least once per week.

(5) Assessment and referral services for patients and significant others.

(6) Medical and psychiatric consultation.

(d) Each service provider must provide to each patient an aggregate of at least forty hours per week of the services described in (c)(1), (2), (3) and (4) above.

(e) Services may be provided to an individual who is on methadone or other approved opiate maintenance or is being detoxified from methadone. Opiate maintenance or detoxification services must be provided through a written agreement with an office certified methadone/opiate treatment provider.

(f) Food and nutrition

(1) The service shall provide each patient with three nutritious meals each day which furnish sufficient nutrients and calories to meet normal needs as well as the special needs of persons in recovery. The service shall have snacks and beverages available between meals.

(2) A qualified dietician, dietetic technician or other appropriately qualified staff shall provide menu planning services and shall be responsible for the procurement of food supplies as well as the coordination of meal preparation and serving. Such staff shall also be responsible for the training and directing of food preparation and serving personnel. Copies of menus shall be kept on file for a period of one year.

(g) The certified bed capacity shall not be exceeded at any time.

(h) Each provider must make arrangements for, or provide directly, child care services for patients' dependent children residing at the facility.

(i) Each provider seeking Medicaid reimbursement must also comply with the requirements of Part 841 of this Title.

(j) Providers must comply with all applicable laws regarding the use of restraint and seclusion.

(k) All patients must at all times be kept physically separated from patients of non Part 817 services.

(l) In accordance with a provider-specific plan approved by the Office prior to implementation, certain groups of patients shall be kept physically separated within the facility based upon clinically appropriate age, gender and developmental grouping.

### **Section 817.3 Admission procedures**

(a) An individual who appears at the service seeking or having been referred for treatment or evaluation shall have an initial determination made and documented in a written record by a qualified health professional, or other clinical staff under the supervision of a qualified health professional, which states the following:

- (1) that the individual is documented as less than 21 years of age on the date of admission and appears to be in need of chemical dependence services;
- (2) that the individual appears to be free of serious communicable diseases that can be transmitted through ordinary contact; and
- (3) that the individual appears not to be in need of acute hospital care, acute psychiatric care, Part 816 crisis services or other services which cannot be provided in conjunction with treatment at the facility or would prevent him/her from participating in a chemical dependence service.

(b) The determinations made pursuant to the above shall be based upon service provider records, reports from other providers and through a face-to-face contact with the individual, all of which must be documented.

(c) Level of care determination. If an individual is determined to be appropriate for chemical dependence services, a level of care determination shall be made by a qualified health professional, or other clinical staff under the supervision of a qualified health professional. The level of care determination shall be signed and dated by the clinical staff member. The level of care determination shall be made promptly and in no event not later than one patient day after the patient's first on site visit at the service.

(d) The level of care determination process must be in accord with the governing authority's policy and procedures and incorporate the use of the OASAS Level of Care for Alcohol and Drug Treatment Referral Protocol (LOCADTR) or another Office approved protocol.

(e) Prohibition against discrimination. No individual shall be denied admission to the service based solely on the individual's:

- (1) prior treatment history;
- (2) referral source;
- (3) maintenance on methadone or other medication prescribed and monitored by a physician, physician's assistant or nurse practitioner; however, if a service provider objects to an individual's continued use of such prescribed drugs or substances, the service provider shall document each of the following: (i) obtain a signed consent form in accordance with the requirements of 42 Code of Federal Regulations Part 2 which authorizes the release of patient identifying information to the physician, physician's assistant, or nurse practitioner who prescribed the drug or substance to the individual ("the prescribing professional"); (ii) consult with the prescribing professional to ascertain their knowledge and awareness of the individual's history of chemical dependence, and if the prescribing professional is unaware of the individual's history of chemical dependence, inform the prescribing professional accordingly; and (iii) after the required consultation in (ii) above, if the prescribing professional believes that the individual should be permitted to continue to use the drug or substance, the individual must be permitted to continue to use the drug or substance;
- (4) pregnancy;
- (5) history of contact with the criminal justice system;
- (6) HIV and AIDS status;
- (7) physical or mental disability; or
- (8) lack of cooperation by significant others in the treatment process.

(f) Additional requirements for the admission of Medicaid eligible individuals. To ensure that the Medicaid funds that are expended are necessary and appropriate expenditures to meet the costs associated with the services authorized by this Part, a service provider must obtain pre-admission approval as follows prior to admitting Medicaid eligible individuals to the service.

(1) The Office shall establish a pre-admission review team (“ART”) that shall use the requirements of this Section to review each individual candidate to determine their appropriateness for admission. If deemed appropriate for admission, the ART shall certify that the individual seeking admission is in need of this level of residential treatment for chemical dependence. The ART shall be operated in accordance with the procedures established by the Office and shall at a minimum consist of a Physician, a Social Worker licensed and currently registered as such by the New York State Education Department, and a Credentialed Alcoholism and Substance Abuse Counselor.

(2) Except in emergency circumstances, the service provider must obtain approval from the ART prior to admitting a Medicaid eligible individual. Emergency admissions are authorized only when an individual appears for treatment meeting the admission criteria and meets one of the following conditions: the individual has a demonstrated inability to abstain outside of a structured 24 hour setting; the individual is unable to access transitional services in the community; or the individual is without appropriate housing. Under no circumstances should an individual be admitted on an emergency basis or otherwise if they are in medical or psychiatric crisis or if they are in need of withdrawal services.

(g) General admission requirements. To be admitted to the service, an individual must be unable to participate in, or comply with, treatment outside of a 24 hour structured treatment setting, based on one or more of the following factors:

(1) the individual has accessed a less intensive level of care and has failed to remain abstinent;

(2) the individual’s environment is not conducive to recovery;

(3) the individual has physical or mental complications and co morbidities requiring medical management which may include, but not be limited to, psychiatric and/or developmental disability conditions; pregnancy; moderate to severe organ damage; or other medical problems that require 24 hour observation and evaluation;

(4) the individual lacks judgment, insights and motivation such as to require 24 hour supervision; or

(5) the individual has substantial deficits in behavioral or functional skills as evidenced by activities of daily living, interpersonal skills, vocational or educational skills, or maladaptive social behavior (e.g., criminal justice involvement).

(h) If the individual is deemed inappropriate for service, unless the individual is already receiving chemical dependence services from another provider, a referral to a more appropriate service provider shall be made. The reasons for denial of admission must be provided to the individual and documented in a written record maintained by the service provider.

(i) If determined appropriate for the service by the service provider, and approved by the ART for Medicaid eligible individuals, the individual shall be admitted. The decision to admit an individual shall be made by a staff member who is a qualified health professional authorized by the policy of the governing authority to admit individuals. The name of the qualified health professional who made the admission decision, along with the date of admission, must be documented in the patient record.

(j) There must be a notation in the patient record that the patient received a copy of the service provider’s rules, including patient rights and a summary of federal confidentiality requirements found at 42 Code of Federal Regulations Part 2 and the federal Health Insurance Portability and Accountability Act (HIPAA) at 45 Code of Federal Regulations Parts 160, 162 and 164. The patient record must also contain a statement to the effect that

such rules were discussed with the patient as well as a signed statement by the patient indicating that he/she understood them.

(k) All patients shall be informed that admission is on a voluntary basis and that a patient shall be free to discharge himself or herself from the service provider at any time. For patients under an external mandate, the potential consequences for premature discharge shall be explained, but this shall not alter the voluntary nature of admission and continued treatment. This provision shall not be construed to preclude or prohibit attempts to persuade a patient to remain in the service provider in his or her own best interest.

(l) Individuals under the age of eighteen may be admitted without the consent of a parent or legal guardian under certain circumstances in accordance with Mental Hygiene Law Section 22.11.

### **Section 817.4 Post Admission Procedures**

#### **(a) Comprehensive evaluation**

(1) The goal of the comprehensive evaluation shall be to obtain that information necessary to develop an individual treatment plan.

(2) The comprehensive evaluation shall obtain that information necessary to determine whether a diagnosis of alcohol related or psychoactive substance related use disorder in accordance with the *International Classification of Diseases, Ninth Revision* or another Office approved protocol is indicated as determined by a face to face interview with a qualified health professional.

(3) Each comprehensive evaluation shall be based, in part, on clinical interviews with the patient, and may also include interviews with significant others, if possible and appropriate.

(4) No later than seven days after admission, staff shall complete the patient's comprehensive evaluation which shall include a written report of findings and conclusions addressing, at a minimum, the patient's:

- (i) chemical use, abuse and dependence history;
- (ii) history of previous attempts to abstain from chemicals and previous treatment experiences;
- (iii) family history;
- (iv) comprehensive psychosocial history, including, but not limited to, the following:
  - (A) legal involvements;
  - (B) HIV and AIDS, tuberculosis, hepatitis or other communicable disease risk assessment;
  - (C) relationships with significant others, history of the use of chemicals by significant others, and the impact of the use of chemicals on significant others;
  - (D) an assessment of the patient's individual, social, vocational and educational strengths and weaknesses, including, but not limited to, the patient's literacy level, daily living skills and use of leisure time;
  - (E) the patient's medical history, mental health history, current status, and the patient's lethality (danger to himself/herself or to others) assessment; and
  - (F) a specific diagnosis of alcohol related or psychoactive substance related use disorder in accordance with the *International Classification of Diseases, Ninth Revision* or another Office approved protocol.

(5) The comprehensive evaluation shall bear the names of the staff members who participated in evaluating the individual and must be signed by the qualified health professional responsible for the evaluation.

(6) The comprehensive evaluation shall recognize and reflect the culture(s) of the patient as well as relevant individual preferences.

(b) Medical history

(1) For those patients who do not have available a medical history and no physical examination has been performed within 12 months, within seven days after admission the patient's medical history shall be recorded and placed in the patient's record and the patient shall receive a physical examination by a physician, physician's assistant, or a nurse practitioner. The physical examination may include but shall not be limited to the investigation of, and if appropriate, screenings for infectious diseases; pulmonary, cardiac or liver abnormalities; and physical and/or mental limitations or disabilities which may require special services or attention during treatment. The physical examination shall also include the following laboratory tests which must be ordered within seven days of admission:

- (a) complete blood count and differential;
- (b) routine and microscopic urinalysis;
- (c) if medically or clinically indicated, urine screening for drugs;
- (d) intradermal PPD, given and interpreted by the medical staff unless the patient is known to be PPD positive; and
- (e) any other tests the examining physician or other medical staff member deems to be necessary, including, but not limited to, an EKG, a chest X-ray, or a pregnancy test.

(2) If the patient has a medical history available and has had a physical examination performed within 12 months prior to admission, or if the patient is being admitted directly to the service provider from another chemical dependence service provider authorized by the Office, the existing medical history and physical examination documentation may be used to comply with the requirements of this Part, provided that such documentation has been reviewed and determined to be current and accurate.

(3) Patient records shall include a summary of the results of the physical examination and shall also demonstrate that appropriate medical care is recommended to any patient whose health status indicates the need for such care.

(c) After the comprehensive evaluation and medical history are completed, a patient shall be retained in such treatment only if the patient:

- (1) has a diagnosis of alcohol related or psychoactive substance related use disorder in accordance with the *International Classification of Diseases, Ninth Revision* or other Office approved protocol;
- (2) continues to meet the admission criteria in this Part;
- (3) is free of serious communicable diseases that can be transmitted through ordinary contact with other patients;
- (4) has no medical or surgical condition or mental disability requiring acute care in a general or psychiatric hospital;
- (5) is not in need of a Part 816 crisis service; and
- (6) can benefit from continued treatment in the service provider.

(d) If the comprehensive evaluation and medical history indicates that the individual needs services beyond the capacity of the service provider to provide either alone or in conjunction with another program, referral to appropriate services shall be made. Identification of such referrals and the results of those referrals to identified program(s) shall be documented in the patient record.

(e) If a patient is referred directly to the service provider from another service provider certified by the Office, or is readmitted to the same service provider within sixty days of discharge, the existing level of care determination and comprehensive evaluation may be used, provided that documentation is maintained demonstrating a review and update.

(f) Treatment plan. A preliminary written individual treatment plan addressing the patient's immediate needs and prescribing a list of scheduled activities shall be developed and implemented within three days after admission. A comprehensive written individual treatment plan ("the treatment plan") shall be developed and implemented within fourteen days after admission to meet the identified needs of the patient in all areas of functioning, including but not limited to, social, emotional, familial, educational and vocational, legal, mental and physical health, as well as addiction. For patients transferring directly from one chemical dependence service to another, an updated treatment plan shall be acceptable.

(g) The treatment plan shall take into account cultural and social factors as well as the particular characteristics, conditions and circumstances of the patient. Parental or guardian involvement in the planning process, if any, must be documented.

(h) The patient shall be included and actively participate in the treatment planning process.

(i) The treatment plan shall:

- (1) be developed in collaboration with the patient as evidenced by the patient's signature thereon;
- (2) be based on the admitting evaluations specified above and any additional evaluation(s) determined to be required;
- (3) specify short and long term goals which can be achieved while the patient is in the service;
- (4) prescribe an integrated service of therapies, activities and interventions designed to meet goals;
- (5) specify schedules for the provision of all services prescribed;
- (6) identify a single member of the clinical staff responsible for coordinating and managing the patient's treatment ("the responsible clinical staff member"); and
- (7) include each diagnosis for which the patient is in need of treatment.

(j) When a service is to be provided by any entity other than the Part 817 service itself, the treatment plan must contain a description of the nature of the service, a record that referral for such service has been made, and the results of the referral.

(k) Treatment according to the treatment plan. The responsible clinical staff member shall ensure that the treatment plan is included in the patient record and that all treatment is provided in accordance with the individual treatment plan. The criteria for successful completion of treatment and discharge shall be specified in the treatment plan.

(l) Review of treatment plans. The treatment plan shall be reviewed, signed and dated by the responsible clinical staff member within fourteen days after admission. Once established, the treatment plan shall be reviewed and revised at least every thirty days thereafter by the responsible clinical staff member in consultation with the patient and the multidisciplinary team as defined in Sections 817.8(v) of this Part. The names of all reviewing individuals shall be recorded in the treatment plan. A summary of the patient's progress in each of the specified treatment plan goals shall be prepared and documented in the patient record as part of the treatment plan review. The treatment plan shall be reviewed, certified, signed and dated by a physician who has knowledge of the patient's situation within fourteen days after admission and every thirty days thereafter.

(m) The case of any patient who is not responding to treatment, is not meeting goals defined in the comprehensive treatment plan, or is disruptive to the service provider must be discussed at a case conference by the multidisciplinary team and the treatment plan revised accordingly.

(n) Documentation of treatment

(1) Progress notes shall be written, signed and dated by the responsible clinical staff member no less often than once per week.

(2) Progress notes shall provide a chronology of the patient's progress related to the goals established in the treatment plan and be sufficient to delineate the course and results of treatment. The progress notes shall indicate the patient's participation in all significant services that are provided. Summaries of any case conferences, treatment plan updates, and special consultations shall be included.

(o) Discharge criteria. A patient shall be appropriate for discharge from the service, and shall be discharged, when he or she meets one or more of the following criteria:

(1) the patient has accomplished the goals and objectives which were identified in the individual treatment plan;

(2) the patient refuses further care;

(3) the patient has been referred to other appropriate treatment which cannot be provided in conjunction with the service;

(4) the patient has been removed from the service by the criminal justice system or other legal process;

(5) the patient has received maximum benefit from the service; or

(6) the individual is disruptive to the service and/or fails to comply with the service's reasonably applied written behavioral standards.

(7) the patient may be discharged or retained after the age of 21, if clinically appropriate, however no Medicaid reimbursement is available after the patient reaches the age of 22.

(p) Discharge planning. The discharge planning process shall begin as soon as the patient is admitted to the service and shall be considered a part of the treatment planning process. The purpose of the discharge plan is to establish the level of clinical and social resources available to the patient upon discharge and the need for services for significant others. The discharge plan shall be developed in collaboration with the patient and any significant other(s) the patient chooses to involve, as clinically appropriate. If the patient is under the age of eighteen, the discharge plan must also be developed in consultation with his or her parent or guardian, unless the patient is being treated without parental consent as authorized by Mental Hygiene Law Section 22.11.

(q) No patient shall be discharged without a discharge plan which has been completed and reviewed by the multi-disciplinary team prior to the discharge of the patient. This review may be part of a regular treatment plan review. The portion of the discharge plan which includes the referrals for continuing care shall be given to the patient upon discharge. This requirement shall not apply to patients who leave the service provider without permission, refuse continuing care planning, otherwise fail to cooperate, or who are transferred to a higher level of care.

(r) The discharge plan shall be developed by the responsible clinical staff member, who, in the development of such plan, shall consider the patient's self-reported confidence in maintaining abstinence and following an individualized relapse prevention plan. The responsible clinical staff member shall also consider an assessment of the patient's home and family environment, vocational/educational/employment status, criminal justice status, and the patient's relationships with significant others. The discharge plan shall include, but not be limited to, the following:

- (1) identification of continuing chemical dependence services and any other treatment, rehabilitation, self-help, vocational, educational, medical, social, and employment services the patient will need after discharge, including identification of continuing care and community support staff;
- (2) identification of the type of residence, if any, that the patient will need after discharge;
- (3) identification of specific providers of these needed services; and
- (4) specific referrals and initial appointments for these needed services.

(s) A discharge summary which includes the course and results of care and treatment must be prepared and included in each patient's record within twenty days of discharge.

### **Section 817.5 Recordkeeping**

- (a) There shall be a single individual patient record for each person admitted to the service which shall include:
- (1) identifying information about the patient and his or her family;
  - (2) the source of referral, date of commencing service and name of primary counselor;
  - (3) the admission diagnosis or diagnoses, including chemical dependence-related medical and psychiatric diagnoses, in official nomenclature with associated diagnostic codes;
  - (4) reports of all evaluations performed, including findings and conclusions;
  - (5) reports of all examinations performed, including but not limited to X-rays, clinical laboratory tests, clinical psychological tests, electroencephalograms, and psychometric tests;
  - (6) the written and signed individual treatment plan, including all reviews and updates;
  - (7) progress notes informative of the patient's condition and response to treatment, written and signed by staff members;
  - (8) documentation and summaries of case conferences, treatment plan updates, and special consultations held;
  - (9) dated and signed prescriptions or orders for all medications with notation of termination dates;
  - (10) the discharge plan;
  - (11) any other documents or information regarding the patient's condition, treatment, and results of treatment;
  - (12) signed forms consenting to treatment and for obtaining or releasing confidential information in accordance with 42 *Code of Federal Regulations* Part 2, the *federal Health Insurance Portability and Accountability Act (HIPAA)* at 45 *Code of Federal Regulations* Parts 160, 162 and 164, or other applicable law; and
  - (13) medical orders.
- (b) Patient records maintained by service providers are confidential and may only be disclosed in conformity with federal regulations on the confidentiality of alcohol and drug abuse patients records as set forth in 42 *Code of Federal Regulations* Part 2, the *Health Insurance Portability and Accountability Act (HIPAA)* at 45 *Code of Federal Regulations* Parts 160, 162 and 164, or other applicable law.
- (c) All medical procedures required, including the use of any medication, as well as the policies and procedures approved by the governing authority, shall be in accordance with the requirements of federal and state law.

- (d) All medical services provided must be provided pursuant to a physician's, physician assistant's, or nurse practitioner's order.
- (e) In the event that more than one chemical dependence service is offered by a provider, the patient record shall be easily identifiable according to the particular service in which the patient is currently participating.
- (f) Disclosure of HIV and AIDS related information contained in a patient's record shall be made in accordance with the Public Health Law, other applicable state and federal statutes and regulations, and subject to the additional disclosure requirements at 42 Code of Federal Regulations Part 2.
- (g) Statistical information shall be reported to the Office as required and on the prescribed forms therefore.

### **Section 817.6 Quality improvement and utilization review**

- (a) Each service shall establish and implement a quality improvement plan and utilization review plan in accordance with this section. The utilization review requirement may be met by the following:
  - (1) the service provider may perform its utilization review process internally; or
  - (2) the service provider may enter into an agreement with another organization, competent to perform utilization review, to complete its utilization review process.
- (b) The utilization review plan shall include procedures for ensuring that admissions are appropriate, that retention and discharge criteria are met, and that services are appropriate. The utilization review plan shall consider each patient's need for continued treatment, the extent of the patient's chemical dependence problem, and the continued effectiveness of, and progress in, treatment.
- (c) Each service provider shall establish a written quality improvement plan in accordance with this section.
  - (1) The quality improvement plan shall identify clinically relevant quality indicators that are based upon professionally recognized standards of care. This process shall include but not be limited to:
    - (i) no less than quarterly self-evaluations, which may include an independent peer review process as discussed below, to ensure compliance with applicable regulations and performance standards;
    - (ii) findings of other management activities, including but not limited to; utilization reviews, incident reviews, and reviews of staff training, development and supervision needs;
    - (iii) surveys of patient satisfaction; and
    - (iv) analysis of treatment outcome data.
  - (2) The service provider shall prepare an annual report and submit it to the governing authority. This report shall document the effectiveness and efficiency of the service in relation to its goals and indicate any recommendations for improvement in its services to patients, as well as recommended changes in its policies and procedures.
  - (3) The purpose of independent peer review is to review the quality and appropriateness of treatment services. The review is to focus on treatment services and the chemical dependence service system rather than on the individual practitioners. The intent of the independent peer review process is to continuously improve the treatment services to chemically dependent individuals.

### **Section 817.7 Medical policy and services**

- (a) The medical director shall, as appropriate:

- (1) oversee the development and revision of medical policies, procedures and ongoing training for matters such as routine medical care, specialized services, and medical and psychiatric emergency care;
- (2) advise the director of the service regarding medical and related problems;
- (3) assist in the development of necessary referral and linkage relationships with other institutions and agencies including, but not limited to, general or specialty hospitals and nursing homes, health-related facilities, home health agencies, hospital outpatient departments, diagnostic and treatment facilities, laboratories and related resources;
- (4) oversee the development of policies and procedures to ensure the provision of routine services, including but not limited to, means for the prompt detection and referral of health problems through adequate medical surveillance and regular examination as needed, implementation of medical orders regarding treatment of medical conditions and reporting of communicable diseases and infection in accordance with law; and
- (5) oversee the establishment of policies and procedures for public health education and screening for all patients regarding tuberculosis, sexually transmitted diseases, hepatitis and HIV and AIDS prevention and harm reduction.

(b) Each service provider shall have written agreements with general hospitals for the immediate transfer of patients or prospective patients in need of acute hospital care, unless the service is provided by a general hospital.

(c) Other medical and mental health services can be provided directly or through arrangements with other providers.

**Section 817.8 Staffing**

(a) The general severity of the condition of the population served, including comorbid conditions, complications and general functioning, may indicate the need for staff in addition to those listed below.

(b) Staff may be either specifically assigned to the service or may be part of the staff of the facility within which the service is located. However, if these staff members are part of the general facility staff, they must have specific training and experience in the treatment of alcoholism, substance abuse and/or chemical dependence specific to the services provided. The percentage of time that each shared staff is assigned to the service must be documented.

(c) A service provider shall have regular and documented training made available to its staff in at least the following areas:

- (1) chemical dependence;
- (2) individual, group and family counseling;
- (3) therapies and other activities supportive of recovery;
- (4) communicable diseases such as tuberculosis, sexually transmitted diseases, hepatitis, HIV and AIDS;
- (5) infection control procedures;
- (6) the role of clinical supervision;
- (7) quality improvement; and
- (8) child and adolescent development.

(d) There shall be a clinical director of the service who is a qualified health professional with at least:

- (1) four years experience in the human services field;
- (2) two years experience in the provision of alcoholism, substance abuse, and/or chemical dependence services;
- (3) two years of administration and supervisory experience prior to appointment as director; and
- (4) two years of adolescent services experience.

(e) There shall be a medical director who will supervise and direct all medical staff and all medical services provided. The medical director shall be a physician licensed and currently registered as such by the New York State Education Department and shall have at least one year of education, training, and/or experience in alcoholism, substance abuse or chemical dependence services. The medical director may also serve as a physician of another chemical dependence service.

(f) Service providers which admit and provide treatment for individuals with other significant mental disorders or mental illness in addition to their chemical dependence shall have a psychologist or psychiatrist, and other appropriate clinical and/or medical staff, available for a sufficient number of hours each week to provide evaluation, treatment, and supervision of other services for these patients.

(g) Service providers which admit and provide treatment for individuals with coexisting medical conditions in addition to their dependence shall have an appropriately qualified physician, physician's assistant, or nurse practitioner for a sufficient number of hours each week to provide evaluation, treatment and supervision of other services.

(h) There shall be at least one full-time equivalent registered nurse with at least one year experience in chemical dependence services. For those service providers that treat individuals with co-existing medical conditions, there shall be such additional licensed practical nurses, registered nurses, registered physician's assistants, and nurse practitioners sufficient to provide the medical services required. Such personnel shall be available on-site or on-call to all patients at all times.

(i) There shall be at least one clinical staff member designated to coordinate activities therapy. This individual shall be adequately trained to coordinate physical and recreational activities for up to sixty patients. Each additional sixty patients, or portion thereof, shall require another clinical staff member to be so designated.

(j) There shall be an adequate number of counselors to provide the required level of service. Each counselor shall have a caseload of no more than eight patients. Counseling staff shall be scheduled for a minimum of one and one-half shifts five days per week, and one shift per day for the remaining two days per week.

(k) There shall be clinical staff available on-site to all patients at all times. During late evening and night shifts, there shall be at least two staff members on duty and awake, one of whom shall be a member of the clinical or medical staff, for up to 100 beds. For each additional 50 beds or portion thereof thereafter, there shall be one additional awake staff member.

(l) There shall be sufficient staff available to ensure that the service's facility and all equipment utilized therein is maintained in such a manner as to provide patients with a clean and safe environment.

(m) In addition to staffing requirements of this Part, a service provider may utilize volunteers, students and trainees, on a salaried or nonsalaried basis. Such personnel shall be provided close professional staff supervision and appropriate education from both internal and external sources.

(n) For the period commencing on the effective date of this Part and ending one year thereafter, at least thirty five percent of the aggregate of the clinical and the medical staff shall be qualified health professionals. For the

period commencing one year and one day after the effective date of this Part and ending two years after the effective date of this Part, at least forty percent of the aggregate of the clinical and the medical staff shall be qualified health professionals. After the two year period following the effective date of this Part, and for all times thereafter, at least fifty percent of the aggregate of the clinical and the medical staff shall be qualified health professionals. Clinical staff members who are not qualified health professionals shall have qualifications appropriate to their assigned responsibilities as set forth in the service provider's written personnel policies, shall be subject to appropriate staff supervision, and shall receive regular and continuing education and training. Individuals who have completed a minimum of 350 education and training clock hours in the areas required by Part 853 of this Title governing Credentialed Alcoholism and Substance Abuse Counselors, as well as individuals who have completed a minimum of 4000 hours of appropriate work experience and a minimum of 85 clock hours of education and training related to knowledge of alcoholism and substance abuse as required by Part 853 of this Title governing Credentialed Alcoholism and Substance Abuse Counselors, may be counted towards satisfying the percentage requirements stated above provided that such individuals, also known as CASAC Trainees, may not be considered qualified health professionals for any purpose under this Part. Notwithstanding the foregoing, each service shall have sufficient qualified health professional staffing levels to meet the requirements of this Part which mandate that certain duties be performed by, under the supervision of, or at the direction of, a qualified health professional.

(o) Each service provider shall have a qualified individual designated as the Health Coordinator who will ensure the provision of education, risk reduction, counseling and referral services to all patients regarding HIV and AIDS, tuberculosis, hepatitis, sexually transmitted diseases, and other communicable diseases.

(p) There shall be at least one full time equivalent a Social Worker licensed and currently registered as such by the New York State Education Department experienced in chemical dependence and adolescents. If qualified to do so, this individual may also perform the family therapist function required in (q) below.

(q) There shall be at least one full time equivalent Family Therapist who is a Social Worker licensed and currently registered as such by the New York State Education Department or a licensed Marriage and Family Therapist. If qualified to do so, this individual may also perform the social worker function required in (p) above.

(r) There shall be at least one Community Support Specialist for every thirty patients or portion thereof who shall be responsible for coordinating care for the patient and assisting in discharge planning.

(s) There shall be one staff member designated to perform an Intake/Admissions Coordinator function.

(t) There shall be a qualified dietician, dietetic technician or other appropriately qualified staff to provide the services required by Section 817.2(f) of this Part.

(u) Each service provider must have one of the following: (1) a Board-eligible or Board-certified psychiatrist licensed and currently registered as such by the New York State Education Department; or (2) a clinical psychologist licensed and currently registered as such by the New York State Education Department who has a doctoral degree and a physician licensed and currently registered as such by the New York State Education Department.

(v) In addition to the requirements of the multidisciplinary team found at Part 800, the multidisciplinary team must also include one of the following who must also have specialized training or one year's experience in treating mentally ill and/or chemically dependent individuals: (1) a Social Worker licensed and currently registered as such by the New York State Education Department; (2) a registered professional nurse currently licensed and registered as such by the New York State Education Department; or (3) an occupational therapist licensed and currently registered as such by the New York State Education Department.

### **Section 817.9 Restraint and seclusion prohibited.**

The use of restraints or seclusion is prohibited. However, “time out” may be used as appropriate. For purposes of this section the following definitions apply:

- (a) “Restraint” means a personal restraint, a mechanical restraint or drug used as a restraint.
- (b) “Seclusion” means the involuntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.
- (c) “Personal restraint” means the application of physical force without the use of any device for the purposes of restraining the free movement of a resident’s body. The term “personal restraint” does not include briefly holding without undue force a resident in order to calm or comfort him or her, or holding a resident’s hand to safely escort a resident from one area to another.
- (d) “Mechanical restraint” means any device attached or adjacent to the resident’s body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.
- (e) “Drug used as a restraint” means any drug that
  - (1) is administered to manage a resident’s behavior in a way that reduces the safety risk to the resident or others;
  - (2) has the temporary effect of restricting the resident’s freedom of movement; and
  - (3) is not a standard treatment for the resident’s medical or psychiatric condition.
- (f) “Time out” means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving for the purpose of providing the resident an opportunity to regain self-control.

### **Section 817.10 Severability.**

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of this Part which can be given effect without the invalid provision or applications, and to this end the provisions of this Part are declared to be severable.

# ATTACHMENT NO. 2

## Cover Sheet

### 1. A cover sheet -With Prohibition and Disclosure information [May need 1 sheet for the provider and 1 for each reviewer

Agency: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ Email: \_\_\_\_\_

Patient Information: ID#: \_\_\_\_\_

Age: \_\_\_\_\_ D.O.B.: \_\_\_\_\_ Sex: \_\_\_\_\_

Parental Consent received: YES \_\_\_; NO \_\_\_ or Physician Authorization: NA \_\_\_ YES \_\_\_

#### Evaluation for Admission Information:

Referred by: \_\_\_\_\_

- \_\_\_ Age appropriate
- \_\_\_ Not in apparent need of more intense level of care
- \_\_\_ Recent unsuccessful attempts at abstinence
- \_\_\_ Accessed less intensive service and failed to remain abstinent
- \_\_\_ Environment not conducive to recovery
- \_\_\_ Physical co-morbidities requiring medical management
- \_\_\_ Mental co-morbidities requiring medical management
- \_\_\_ Lacks judgment, insight, and motivation
- \_\_\_ Substantial deficits in behavioral/functional skills as evidenced by activities of daily living, interpersonal skills, Vocational or Educational skills and/or maladaptive social behavior (e.g., criminal justice involvement)

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

(Assessment Counselor)

#### Admission Review Team Action:

Physician Certification \_\_\_ YES \_\_\_ NO Date: \_\_\_\_\_

Review Time: \_\_\_\_\_ Documentation Rating: 1 2 3 4 5 (Circle)

CSW Certification: \_\_\_ YES \_\_\_ NO Date: \_\_\_\_\_

Review Time: \_\_\_\_\_ Documentation Rating: 1 2 3 4 5 (Circle)

CASAC Certification: \_\_\_ YES \_\_\_ NO Date: \_\_\_\_\_

Review Time: \_\_\_\_\_ Documentation Rating: 1 2 3 4 5 (Circle)

## 2. Summary of Admission Review Findings

### Admission Assessment – Summary Findings

Patient ID: \_\_\_\_\_ Medicaid Recipient: \_\_\_ YES \_\_\_ NO

Age \_\_\_\_\_ D.O.B. \_\_\_\_\_

Appears to be in need treatment for chemical dependence \_\_\_ YES

Individual seems to be free of serious communicable disease often transmitted through ordinary contact. \_\_\_ YES

Individual appears to need acute hospital care, acute psychiatric care, Part 816 Crisis services. \_\_\_ NO

The above findings are based on \_\_\_ service provider reports; \_\_\_ other reports; \_\_\_ face to face contact and are documented in the clinical record. [Check all sources that apply.]

#### **An individual must be unable to participate in, or adhere to treatment outside of a 24 hour structured treatment setting, based on:**

##### **Required**

Alcohol and Other Drug Use Hx: [Provide a history for each substance used that includes age of onset, pattern of use when problem first noticed, route, a description of current amount – frequency – use pattern, date of last use. Summarize chemical of choice/preference, client perception of use and relationship to referral. Describe method of obtaining each chemical, periods of abstinence, reason for return to use, reason for most recent use. Summarize symptoms and consequences of use for each chemical of use. Note medical problems client thinks resulted from use. Note other chemical use Hx information of relevance.]

##### **AND**

#### **The individual has accessed other treatment and has failed to remain abstinent:**

Alcohol and Other Drug Use Treatment History: [Include dates/length of past treatment episodes in crisis, outpatient, inpatient, community residential services, support groups, private counseling, etc. Indicate both referral source and the individual's judgment regarding the outcome – including completion - of each reported treatment episode. OR, briefly explain the absence of a treatment history] Where you use discharge summaries, referral reports or other documentation of treatment, indicate that documentation was used for the episode it covers.

##### **AND/OR**

#### **The individual's environment is not conducive to recovery:**

**Environmental factors:** [Provide a description of the individual's living situation and the circumstances that make it a recovery aversive environment and that support admission based on this admission criterion.] Indicate if this criterion was not considered in reaching your admission decision

##### **AND/OR**

**Physical complications or conditions requiring medical management, 24 hour observation, or oversight:** [Include medical history, accidents, emergency care, ob-gyn care, a medications history and current use report, a report of organ damage to support admission based on this admission criterion.] Indicate if this criterion was not considered in reaching your admission decision

##### **AND/OR**

#### **Mental complications or conditions requiring medical management, 24 hour observation, or oversight:**

[Include a history of emergency care, outpatient treatment, and inpatient treatment that includes most recent treatment and status at discharge. Where discharge summaries or other clinical care reports were used in your assessment, list reported diagnoses, summarize the report and specify when the report was completed.] Indicate if this criterion was not considered in reaching your admission decision

##### **AND/OR**

**Individual lacks judgment, insights, and motivation such as to require 24 hour supervision:** [This will need a guidance sentence or two.] Indicate if this criterion was not considered in reaching your admission decision.

##### **AND/OR**

**The individual has substantial deficits in behavioral or functional skills as evidenced by activities of daily living, interpersonal skills, vocational or educational skills, or maladaptive social behavior (e.g., criminal justice involvement).** [This will need a guidance sentence or two.] Indicate if this criterion was not considered in reaching your admission decision.

# ATTACHMENT NO. 3

## References

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Contact Name

---

Business Name

---

Address, State, Zip Code

---

Telephone Number

---

Contact Name

---

Business Name

---

Address, State, Zip Code

---

Telephone Number

---

Contact Name

---

Business Name

---

Address, State, Zip Code

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Telephone Number

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Contact Name

---

Business Name

---

Address, State, Zip Code

---

Telephone Number

---

Contact Name

---

Business Name

---

Address, State, Zip Code

---

Telephone Number

# ATTACHMENT NO. 4

## Procurement Lobbying Restrictions

### Bidder's Affirmation of Understanding of and Agreement Pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

**Background:**

State Finance Law §139-j(6)(b) provides that:

*Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.*

**Instructions:**

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Procurement Lobbying Restrictions (continued)

### Offerer's Certification of Compliance with State Finance Law §139-k(5)

#### **Background:**

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

#### **Instructions:**

A Governmental Entity must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity. While the nature of the Procurement Contract will determine how to obtain the certification and when the certification should be obtained, the following documents have been identified for consideration:

- solicitation documents (such as an Invitation for Bids or Requests for Proposal);
- procurement contract; and
- other/stand alone certification.

It is recommended that the certification be obtained as early as possible in the process, such as when an Offerer submits its proposal, bid or other form of offer.

<b>Offerer Certification:</b>
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I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____	Date: _____
Name: _____	
Title: _____	
Contractor Name: _____	
Contractor Address: _____	
_____	
_____	

## **Procurement Lobbying Restrictions (continued)**

### **Offerer Disclosure of Prior Non-Responsibility Determinations**

*Note: Government Entities may wish to consider integrating this language in their existing forms.*

#### **Background:**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

#### **Instructions:**

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

As an alternative to this form, the Governmental Entity may elect to incorporate this disclosure question into its procurement questionnaire, such as the New York State Standard Vendor Responsibility Questionnaire set out at <http://www.ogs.ny.gov/procurecounc/pdfdoc/BestPractice.pdf>.

**Procurement Lobbying Restrictions (continued)**

**Bidder's Disclosure of Prior Non-Responsibility Determinations**

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

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_ Date: \_\_\_\_\_

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

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

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

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: (Add additional pages as necessary)

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

No Yes



ST-220

# ATTACHMENT NO. 5

(1/05)

New York State Department of Taxation and Finance

## Contractor Certification

(Pursuant to Section 5-a of the Tax Law)

For more information, see Publication 222, *Question and Answers Concerning Tax Law Section 5-a.*

Contractor name			For office use only Contract number
Contractor's principal place of business	City	State ZIP code	
Mailing address (if different than above)			Estimated contract value
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)	
			\$
Contractor's telephone number ( )	Contracting state agency		

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am  
 \_\_\_\_\_  
 (name) (title)

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

### Part I. Contract services that are not services for purposes of Tax Law section 5-a

(Mark an X in the box if this statement is applicable. If you mark this box, you do not have to complete Parts II through V.)

- The requirements of Tax Law section 5-a do not apply because the subject matter of the contract concerns the performance of services which are not *services* within the meaning of Tax Law section 5-a.

(If you did not mark the box next to the statement in Part I, mark an X next to the applicable statement in Parts II through V.)

### Part II. Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law.
- As of the date of this certification, the contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

### Part III. Affiliate registration status

- As of the date of this certification, the contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and each affiliate exceeding the \$300,000 sales threshold during such periods is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address, and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

- To the best of the contractor's knowledge, the contractor has one or more affiliates and, as of the date of this certification, each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

**Part IV. Subcontractor registration status**

- As of the date of this certification, the contractor does not have any subcontractors.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that it is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each subcontractor exceeding the \$300 000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

**Part V. Subcontractor affiliate registration status**

- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it does not have any affiliates
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification it has any affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has one or more affiliates having made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that each such affiliate is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has no affiliate having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_ (signature)

\_\_\_\_\_ (title)





## Instructions

### General information

On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts valued at more than \$15,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. A contractor must use Form ST-220, *Contractor Certification*, to make this certification before the contract may be approved by the Office of the State Comptroller (OSC), or other contract approver if OSC is not required to approve the contract.

This statute applies to contracts resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

The statute does not apply to purchases from preferred sources. For additional information, please see Publication 222, *Questions and Answers Concerning Tax Law Section 5-a*.

### Definition of terms associated with section 5-a

The following is a partial list. Please see Publication 222 for additional information.

A *contractor* is defined as a person awarded a contract by a covered agency.

The term *person* is defined as any entity in business for either profit or not-for-profit purposes and can refer to an individual, partnership, limited liability company, society, association, joint stock company, or corporation.

A *covered agency* is defined as New York State or any department, board, bureau, commission, division, office, council or agency of New York State; public authorities and public benefit corporations. The State Legislature, the judiciary, Department of Law, Office of State Comptroller, State Education Department, State University of New York and the senior colleges of City University of New York are included in this definition.

An *affiliate* is an entity which, through stock ownership or any other affiliation, directly, indirectly or constructively, controls another entity, is controlled by another entity, or is, along with another entity, under the control of a common parent company.

A *subcontractor* is an entity specifically engaged by a contractor or another subcontractor to provide commodities or perform services necessary to allow a contractor to fulfill a particular contract with a covered agency.

*Commodities* means, other than with respect to contracts for State printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange.

*Tangible personal property* means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes, without limitation: (1) raw materials, such as wood, metal, rubber and minerals; (2) manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, computers, clothing, motor vehicles, boats, yachts, appliances, lighting fixtures, building materials; (3) pre-written off-the-shelf software; (4) artistic items such as sketches, paintings, photographs, moving picture films and recordings; (5) animals, trees, shrubs, plants and seeds; (6) bottled water, soda and beer; (7) candy and confections; (8) cigarettes and tobacco products; (9) cosmetics and toiletries; (10) coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange; (11) postage stamps, when purchased for purposes other than mailing; and (12) precious metals in the form of bullion, ingots, wafers and other forms.

### Completing Form ST-220 Identification information

**Contractor name:** Enter the exact legal name of the person or entity who is contracting to provide commodities or services to a covered agency of New York State. This is the name registered with the New York Department of State.

**Contractor's principal place of business:** Enter a street address, not a PO box number.

**Mailing address:** Enter the address where contractor receives mail, if different than the principal place of business.

**Contracting state agency:** Enter the state agency awarding the contract to the contractor.

**Certification statement:** If the contractor is a corporation, the statement must be completed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the corporation. If the contractor is a partnership, the statement must be completed by a partner or person authorized by the partnership. If the contractor is a limited liability company, the statement must be completed by a member of the LLC and be authorized by the LLC.

### Part I - Contract services not pursuant to Tax Law section 5-a

If the services to be performed under the contract are not services within the meaning of Tax Law section 5-a, mark an **X**. You do not have to complete Parts II through V. You must sign and have the certification acknowledged.

For procurement law purposes, *services* means, other than with respect to contracts for State printing, the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For procurement law purposes, technology is a service. The term *services* for procurement law purposes does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article eleven-B of the State Finance Law.

The term *taxable services* for New York State and local sales and compensating use tax law purposes includes, but is not limited to: 1) providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed manner in any other

manner; 2) processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale; 3) installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets); 4) storing tangible personal property that is not being held for sale; 5) renting safe deposit boxes, vaults, and similar storage facilities; 6) maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs); 7) providing parking, garaging, or storing services for motor vehicles; 8) interior decorating and designing; 9) protective or detective services; and 10) entertainment or information services provided by means of telephony or telegraphy.

**Parts II through V**

If the contract is covered under Tax Law section 5-a, you must mark an **X** in one box in each of these parts. You must also sign and have the certification acknowledged, and complete Schedule A.

**Schedule A**

**Column A - Relationship to the contractor**

The contractor should enter a **C**. It is not necessary for the contractor to complete columns C through E since this information has been provided on page 1.

If the person listed in column B is an affiliate of the contractor, enter an **A**; if a subcontractor, enter an **S**, if an affiliate of a subcontractor, enter **SA**.

**Column B - Name**

Enter the exact legal name as registered with the New York Department of State of each corporation or limited liability company. If the person is a partnership or sole proprietor, enter each partner's or the owner's given name. If the person uses a different name or DBA (doing business as), enter that name as well.

**Column C - Address**

Enter the street address of the person's principal place of business. Do not enter a PO box.

**Column D - ID number**

If the person listed in column B is an individual, enter the social security number of that person. Otherwise enter the employer identification number (EIN) assigned to the person.

**Column E - Sales tax ID number**

Enter the sales tax identification number, if different from the federal identification.

**Column F - Proof of registration**

Enter **CA** and attach a copy of the certificate of authority for the person.

If the certificate of authority is not readily available and if the person is registered with the Department of Taxation and Finance and has confirmed this status with the DTP, enter **RC**.

**Return a signed and acknowledged original Form ST-220, and a copy, with the contract to the procuring state agency.**

## APPENDIX A

### STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, 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. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).
4. **WORKERS’ COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, 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 to the State 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 (2NYCRR 105.4).

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

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** 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:

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

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

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

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

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

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

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to 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 Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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  
30 South Pearl St – 2<sup>nd</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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 the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development 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 (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law 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.

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

# Appendix B

## Minority and Women-Owned Business Enterprises

**I. DEFINITIONS.** The following terms shall be defined in accordance with Section 312 of the Executive Law:

**STATE CONTRACT** herein referred to as “**State Contract**”, shall mean (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 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. For purposes of this agreement, the term "services" shall not include banking relationships, the issuance of insurance policies and contracts, or contracts with a contracting agency for the sale of bonds, notes or other securities.

**SUBCONTRACT** herein referred to as “**Subcontract**”, shall mean any agreement providing for a total expenditure in excess of \$25,000 for construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor's obligation under a State Contract is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon for the beneficial use of contractor.

**WOMEN-OWNED BUSINESS ENTERPRISE** herein referred to “**WBE**”, shall mean a business enterprise, including a sole proprietorship, partnership, or corporation that is: (a) at least fifty-one percent 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; and (d) an enterprise authorized to do business in this State and independently owned and operated.

**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 owned by one or more minority group members; (b) an enterprise in which such minority ownership interest 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; and (d) an enterprise authorized to do business in this State and independently owned and operated.

**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 BUSINESS** shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law.

**II. TERMS.** The parties of 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 OASAS [OASAS]):

1. As a pre-condition for the award of any State Contract, Contractor agrees to submit an Equal Employment Opportunity (EEO) Policy Statement which conforms to the following provisions:

(a) 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, upgrading, demotion, transfer, layoff, or termination and raises of pay or other forms of compensation.

(b) At the request of OASAS, 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 Contractor's obligations therein.

(c) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of 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.

(d) Contractor will include the provisions of "a", "b", "c", above, in every Subcontract over \$25,000.00.

2. Contractor shall indicate whether it is able to separate out from its entire work force that portion of its work force which will be utilized in the performance of this State Contract.

3. For State Contracts which provide labor, services, supplies, equipment or materials, as defined above, contractor must provide a Staffing Plan of the anticipated work force to be utilized on the State Contract broken down by specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency (OASAS) may specify.

4. 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.

5. If contractor fails to provide a Staffing Plan, or in the alternative, a description of its entire work force, OASAS may reject contractor's bid, unless contractor either commits to provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same.

6. After the State Contract has been awarded, contractor shall provide a Utilization Report which breaks down and describes contractor's and every subcontractor's work force by specified ethnic background, gender, and Federal Occupational Categories. The prime contractor shall be responsible for collecting reports from its subcontractors and providing such reports to OASAS. For State Contracts for construction, the Utilization Report shall be completed using the number of hours worked for each relevant job title within the Federal Occupational Categories. During the term of State Contract construction contractors must provide a Utilization Report on a monthly basis; contractors providing labor, services, supplies, equipment or materials, who are unable to separate out their work force must provide Utilization reports on a semi-annual basis; all other contractors must provide Utilization Reports every three months.

7. Contractor shall provide OASAS reports of its compliance with the terms of Article 15-A of the Executive Law as may be required by OASAS.

8. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN, OASAS 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 maintain 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 prime contractor.

**9. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.** Based upon an analysis of the following factors, OASAS shall determine whether contractor has made conscientious and active 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 MWBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its efforts, including names and addresses of firms contacted, 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 MWBE participation.

(d) Whether prime 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, partnership, or other similar arrangements among subcontractors.

(f) Whether contractor has made progress payments promptly to its subcontractors.

(g) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the prime contractor.

It shall be the responsibility of prime contractor to ensure compliance by every subcontractor with these provisions.

## **10. GOALS.**

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

(i) 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 \$100,000.00 whereby OASAS 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 two-percent (2%) for Certified Minority-Owned Business Enterprises and three-percent (3%) for Certified Women-Owned Business Enterprises.

**11. ENFORCEMENT.** OASAS will be responsible for enforcement of each contractor's compliance with these provisions. Contractor, and each subcontractor, shall permit OASAS access to its books, records and accounts for the purpose of investigating and determine whether contractor or subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If OASAS determines that a contractor or subcontractor may not be in compliance with these provisions, OASAS may make every reasonable effort to resolve the issue and assist the contractor or subcontractor in its efforts to comply with these provisions. If OASAS is unable to resolve the issue of noncompliance, OASAS may file a complaint with the Division of Minority and Women's Business Development (DMWBD).