



**Office for People With  
Developmental Disabilities**

# REQUEST FOR APPLICATIONS

Grant Opportunity: Supportive Residential Habilitation  
Transformation Grant

Version 3 Release Date: May 18, 2022



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1. Introduction

1.1. RFA Purpose, Term, and Designated Contact

1.1.1. By this Request for Applications (“RFA”), the New York State Office for People With Developmental Disabilities (“OPWDD”) is seeking applications from responsible and responsive providers committed to expanding Supportive Individual Residential Alternative (IRA) Residential Habilitation and Family Care opportunities within their certified residential program.

The objective of this grant opportunity is to enable individuals to live in the most integrated setting possible in accordance with their needs. Significant barriers may exist in terms of increasing these residential opportunities, such as a lack of available staffing, a lack of new tools and technologies to maximize available Direct Support Professional staffing and support, and a concern that a “safety net” should be in place if the person may need to return to a prior placement due to health and safety needs.

This grant opportunity seeks to help address these barriers and expand options for people who choose to move from a supervised 24-hour residential settings and/or people currently on the CRO in need of housing, to move to a supportive IRA or Family Care opportunity. Provider agencies may use grant funds to invest in existing capacity, develop new capacity, and/or support people who want to move to a more independent and integrated setting.

This RFA provides information and instructions necessary for the submission of applications seeking award of this contract. The application is available online in Grants Gateway, under the **Grant Opportunity: Supportive Residential Habilitation Transformation Grant**. Please read this RFA in its entirety and follow the instructions carefully; failure to do so could result in rejection of the application.

1.1.2. The contract resulting from this RFA is anticipated to begin on May 25, 2022 and end on March 31, 2024. Pursuant to Chapter 53 of the Laws of 2021, the New York State Office of the State Comptroller’s approval is not required.

1.1.3. The Designated Contact for this procurement is:

Connie Blais  
New York State Office for People With Developmental Disabilities  
44 Holland Avenue  
Albany, New York 12229  
Email Address: [fmapgrants@opwdd.ny.gov](mailto:fmapgrants@opwdd.ny.gov)

Please see restrictions on contacts with OPWDD Employees, Section 7.4 of this RFA.

1.2. Key Events and Dates

Release of RFA Version 2	<del>Tuesday, March 22, 2022</del> Friday, March 25, 2022
Email Registration of Intent to Participate in Applicant’s conference	<del>Friday, April 1, 2022</del> Tuesday, April 5, 2022
Applicant Conference	<del>1:00 p.m.</del> Wednesday, April 6, 2022



Questions Due Date	2:00 p.m. EST <del>Monday, April 11, 2022</del> Thursday, April 14, 2022
OPWDD Responses to Questions	<del>Friday, April 15, 2022</del> Wednesday, May 18, 2022
Applications Due	2:00 p.m. EST <del>Monday, May 2, 2022</del> Wednesday, June 8, 2022
Notification of Tentative Award	<del>Monday, May 16, 2022</del> Wednesday, July 13, 2022
Contract Start Date	<del>Wednesday, May 25, 2022</del> Upon OPWDD Approval

\*\* NOTE: The dates above are targets and are subject to change at OPWDD’s sole discretion.

**1.3. Minimum Qualifications**

1.3.1. The minimum qualifications that must be met for an Applicant to be considered for evaluation under this RFA are as follows:

1.3.1.1. Applicant must be a Not-For-Profit (NFP) organization authorized to do business in New York (including NFP corporations formed under New York State Law, local government units, or organizations created by an act of the New York State Legislature for charitable purposes, which include providing services to persons with developmental disabilities).

1.3.1.2. Applicant must be registered in Grants Gateway with Prequalified Status

1.3.1.2.1. Nonprofit organizations must Prequalify to do business with New York State agencies before they can compete for State grants. Grant proposals received from nonprofit applicants that are not Prequalified in the Grants Gateway at the application due date and time will not be evaluated. Such proposals will be disqualified from further consideration

1.3.1.2.2. For more information about Grants Gateway and Prequalification, please visit the Grants Gateway website <https://grantsmanagement.ny.gov/get-prequalified> or contact the Grants Management Team at Grantsgateway@its.ny.gov . The Grants Management help desk/hotline can be reached at (518) 474-5595.

1.3.1.3. The Applicant must be a provider certified by OPWDD under the 1915(c) OPWDD Comprehensive Waiver to deliver Residential Habilitation Services and must not be on OPWDD’s Early Alert list at the time of application.

1.3.1.4. The Applicant must have experience operating Supportive Residential Habilitation and/or Family Care services. If the Applicant does not have this experience, it must demonstrate a commitment of the Board of Directors to develop new Supportive Residential Habilitation opportunities and/or Family Care services.

1.3.1.5. Applicant must be current on the submission of Consolidated Fiscal Reports (CFRs) at the time the application is submitted. Applicants must provide the most recent CFR schedule 2A for the purpose of demonstrating overall financial viability. Applicants may be asked to provide an interim CFR, including CFR schedule 2A, and interim financial statements.

1.3.1.6. The Applicant must agree to participate in a Community of Practice and/or regular meetings coordinated by OPWDD, or OPWDD’s representatives, through March 31, 2024 or later as determined by OPWDD.



1.3.1.7. As outlined in Section 6.3, Reporting, of this RFA, the Applicant must agree to provide outcome information and evaluation report(s) through the forms and/or formats developed and distributed by OPWDD at a frequency requested through March 31, 2024 or later as determined by OPWDD regardless of when grant funds have been expended or the term of the contract.

1.3.2. Pursuant to Chapter 53 of the Laws of 2021, OSC approval is not required.

**1.4. Email Registration / Applicant's Conference:**

1.4.1. Potential Applicants may participate in the Applicant's Conference as scheduled in Section 1.2, Key Events and Dates, of this RFA. To participate, Applicants must:

1.4.1.1. Notify OPWDD of their intent to participate in the Applicant's Conference via e-mail, no later than the Email Registration of Intent to Participate in Applicant's Conference due date listed in section 1.2 of this RFA, to the following designated mailbox, referencing the title of this RFA in the subject:

Email Address: [fmapgrants@opwdd.ny.gov](mailto:fmapgrants@opwdd.ny.gov)

1.4.1.2. Provide the current mailing address, email address, and telephone number(s) for the person who will be the Applicant's designated point of contact throughout the duration of this RFA; and

1.4.1.3. Provide the current mailing address, email address, and telephone number(s) of the individuals who will be participating in the Applicant's Conference call.

1.4.1.4. Applicants must send notification of any and all changes related to the point of contact provided in the Email Registration to [fmapgrants@opwdd.ny.gov](mailto:fmapgrants@opwdd.ny.gov). OPWDD is not responsible for any miscommunications that occur throughout this RFA as a result of an applicant's failure to provide notification of changes in the point of contact information.

1.4.2. **Email Registration** is required in order for a prospective Applicant to attend the Applicant's Conference.

**2. Scope of Work**

**2.1. Background**

2.1.1. Office for People With Developmental Disabilities (OPWDD)

2.1.1.1. OPWDD is a New York State executive agency responsible for the provision, regulation, and oversight of services to individuals with Intellectual and/or Developmental Disabilities (I/DD) in New York State. OPWDD directly provides services, and also oversees services delivered by an extensive network of service providers. More than 126,000 individuals with



developmental disabilities are served by the combined public/private service system. OPWDD has extensive investment in stakeholder groups comprised of self-advocates, families, advocates, state and local human service agencies, state and local government, and the business community. It is overseen by multiple federal and state oversight and control agencies.

2.1.2. American Rescue Plan Act and Federal Medical Assistance Percentage

- 2.1.2.1. OPWDD is pleased to offer this funding opportunity resulting from the American Rescue Plan Act (ARPA) signed into law on March 11, 2021. Section 9817 of ARPA provides a 10 percent increase in Federal Medical Assistance Percentage (FMAP) to state Medicaid programs from April 1, 2021 to March 30, 2022 to supplement existing state expenditures on home and community-based services (HCBS). As detailed in State Medicaid Director Letter #21-003, issued by the Centers for Medicare & Medicaid Services (CMS) on May 13, 2021, CMS affords states the ability to invest or reinvest these funds in a variety of ways that expand and enhance investments in Medicaid-covered HCBS, address COVID-related needs, and build HCBS capacity.

This opportunity enables OPWDD to make significant investments intended to expand, enhance, or strengthen HCBS for Medicaid members. This new federal funding arrives at an opportune moment, as OPWDD providers work to rebuild and expand capacity, adjust to the realities of post-pandemic service provision, address increases in demand, and build workforce capacity.

The growing workforce crisis and increasing costs for certified housing as well as demand for more flexible housing options necessitates new and sustainable approaches to the delivery of housing and residential supports for people of all ability levels. The framework for flexible housing supports needs to be revised, strengthened, and enhanced. This RFA is focused on developing the Certified – Supportive Individualized Residential Alternative (Supportive IRA) and Family Care capacity across the service system. OPWDD will release a separate RFA focused on developing capacity across non-certified housing opportunities.

**2.2. Program Description**

The purpose of this grant program is to expand Supportive IRA Residential Habilitation and Family Care opportunities for individuals with I/DD. Proposals should demonstrate how the providers will assist people residing in supervised 24-hour residential settings and/or people currently on the CRO in need of housing, move to a Supportive IRA or Family Care opportunity. Grant funding should increase the ability of providers to employ flexible strategies to enhance person-centered service delivery and to further incentivize the provision of supports and services that will allow individuals with I/DD to live in a more integrated setting of their choosing.

- 2.2.1. OPWDD intends to award grants to qualified Residential Habilitation providers that are committed to examining the provision of residential services to expand Supportive IRAs Residential Habilitation and/or Family Care opportunities within their certified residential program.



- 2.2.2. Preference will be given to grant applications that clearly document how expansion of the number of certified Supportive IRA Residential Habilitation or Family Care opportunities (or expansion of the number of individuals receiving these services) will be achieved within the provider's current approved capacity.
- 2.2.3. Preference will be given to applications with strategies that will result in a move towards more integrated residential settings and/or propose strategies that leverage methods (e.g., technology) to minimize needed staffing supports without compromising the health and safety of individuals supported.
- 2.2.4. Preference will be given to applications that demonstrate sustainable strategies, which may be replicated and/or maintained after the funding period ends.
- 2.2.5. Preference will be given to applications that demonstrate effective strategies to meet the needs of individuals with varied racial, ethnic, cultural, linguistic, gender, sexual identity backgrounds (e.g., deliberate outreach to underserved communities).
- 2.2.6. Examples of proposed objectives may include, but are not limited to:
  - 2.2.6.1. The development of Supportive IRAs or Family Care opportunities that will be used as a means to offer new, more independent options for individuals with I/DD living in existing supervised opportunities and/or individuals with I/DD not currently receiving Supervised Residential Habilitation services but who are identified on the Certified Residential Opportunity (CRO) list;
  - 2.2.6.2. The enhancement of services in existing Supportive IRAs or Family Care homes.
- 2.2.7. Grant resources are available for initial investment activities that address barriers to creating, and transitioning people to live in, Supportive IRAs and Family Care opportunities. Grantees should consider how these investments can be leveraged to provide on-going services using existing funding and service models after the grant period ends. Examples of proposed activities may include, but are not limited to:
  - 2.2.7.1. Leveraging new tools and technologies to maximize available Direct Support Professional (DSP) staffing;
  - 2.2.7.2. Investing in property and start-up costs associated with staffing "hubs" (e.g., locations with 24-hour on-call staff);
  - 2.2.7.3. Consultant costs for planning and development of service delivery options;
  - 2.2.7.4. Training and certifying staff;
  - 2.2.7.5. Developing protocols to identify, hire, and train a paid-neighbor, live-in caregiver, or developing other staffing models that will support DSPs and address staffing shortages;
  - 2.2.7.6. Creating clinical infrastructures to support individuals receiving services with high clinical support needs;



- 2.2.7.7. A resource fund for the Supervised IRA provider to offset lost service revenue when a Supervised IRA opportunity is held vacant for a period of three months, while the resident has moved to a newly created Supportive or Family Care opportunity made available through this grant opportunity.
- 2.2.8. In accordance with federal requirements, funding for this initiative cannot be used for individuals' room and board costs.
- 2.2.9. OPWDD will provide technical assistance to grantees that need to access funding for community transition services through existing funding through OPWDD's Comprehensive HCBS Waiver.

### **2.3. Deliverables**

- 2.3.1. The successful Applicant must provide reports to OPWDD as outlined in Section 6.3, Reporting, of this RFA.

## **3. Application Process**

### **3.1. Applicant's Conference/ Submission of Questions**

#### **3.1.1. Applicant's Conference**

- 3.1.1.1. Applicants may participate in the Applicant's Conference via telephone conference call as scheduled in Section 1.2 of this RFA. Conference call details will only be provided to applicants who submit an Email Registration as required in Section 1.4 of this RFA
- 3.1.1.2. The goal of the Applicant's Conference will be to provide an overview of the current project, to respond to applicants' previously submitted questions about the RFA, and to answer additional questions articulated during the conference. Questions and answers reviewed and discussed during the conference will be made available to all attendees of the conference by the date listed in Section 1.2 of this RFA.
- 3.1.1.3. As previously stated, Email Registration will serve to register each applicant for the Applicant's Conference. Each Applicant will be required to confirm their intention to attend the Applicant's Conference by the date provided in Section 1.2 of this RFA. Confirmation must include the agency's name and the name(s) of the person(s) who will be attending the conference.
- 3.1.1.4. Conference call information will be distributed upon receipt of applicant's Email Registration.

#### **3.1.2. Submission of Questions**

- 3.1.2.1. Submission of Questions related to this RFA will be accepted before, during and after the Applicant's Conference. Substantive questions must be submitted via e-mail to the following designated email below no later than the Questions Due Date, as stated in Section 1.2, Key



Dates and Events, of this RFA. Each question must, to the degree possible, cite the specific RFA Section to which it refers.

Email Address: FMAPGrants@opwdd.ny.gov

### **3.2. Responses to Questions and Amendments to this RFA**

3.2.1. Responses to questions, notifications of amendments, and all other updates and/or announcements related to this RFA will be posted on the Supportive Residential Habilitation Transformation Grants Gateway Opportunity, OPWDD's Procurement Opportunities website at <https://opwdd.ny.gov/procurement-opportunities>, and the New York State Contract Reporter website at <https://www.nyscr.ny.gov/contracts.cfm>

3.2.2. The answers to all questions will be in the form of a formal addendum, which will be annexed to and become part of this RFA and any ensuing contract(s).

### **3.3. Application Due Date**

3.3.1. Applications are due no later than the date and time as stated in Section 1.2, Key Dates and Events, of this RFA.

3.3.2. Applications received after the due date and time will not be accepted.

### **3.4. Application Submission and Grants Gateway**

3.4.1. Applications responding to this RFA must be submitted in the New York State Grants Gateway.

3.4.2. The Applicant must provide all information requested in the Grants Gateway Application and upload the appropriate documents as indicated in the Pre-Submission Uploads tab in Grants Gateway. Failure to follow these instructions may result in disqualification.

**3.5.** An application that is incomplete in any material respect may be eliminated from consideration. The following outlines the required information to be provided by the Applicant for each component of an application submission to constitute a complete application. All applications will be subject to verification by OPWDD.

3.5.1. Detailed instructions are available at <https://grantsmanagement.ny.gov/resources-grant-applicants> for meeting and completing the following requirements:

3.5.1.1. Registering an Organization;

3.5.1.2. Getting Prequalified;

3.5.1.3. Applying for a Grant;

3.5.1.4. Managing Contracts.



3.5.2. Help Desk:

- 3.5.2.1. In addition to the support resources available to Grants Gateway users such as manuals, videos, webinars, and FAQs, Grants Management provides live help desk support for Grants Gateway users.

Hours: Monday – Friday 8:00 a.m. to 4:00 p.m.

Phone: (518) 474-5595

Email: grantsgateway@its.ny.gov

- 3.5.2.2. An after-hours support desk is available weekdays between 4:00 p.m. and 8:00 p.m. for account lockouts and basic questions at (800) 820-1890 or helpdesk@agatesoftware.com.

**4. Evaluation of Applications**

**4.1. General**

- 4.1.1. An Evaluation Team comprised of OPWDD staff will conduct an initial review of the application to determine whether the Minimum Qualifications for Selection set forth in Section 1.3 of this RFA have been met. Applications not meeting the Minimum Qualifications will be disqualified and only applications meeting the Minimum Qualifications will be scored.
- 4.1.2. Applications will also be reviewed by OPWDD to determine if they contain all of the submittals specified in this RFA. Applications that are incomplete in any material respect may be disqualified as non-responsive.
- 4.1.2.1. The selection process may also include OPWDD’s verification of information provided.
- 4.1.3. The applications will be evaluated for the purposes of (1) examining the responses for compliance with this RFA and (2) selecting a responsible and responsive Applicant whose combination of technical merit and cost would most benefit OPWDD. The evaluation process will be conducted in a fair and impartial manner by a multidisciplinary Evaluation Team comprised of OPWDD staff.
- 4.1.4. During the evaluation process, the content of the applications will be held in confidence and will not be revealed except as may be required under the Freedom of Information Law or as otherwise required by law. Freedom of Information Law provides for an exemption from disclosure for trade secrets or information if the disclosure would cause injury to the competitive position of commercial enterprises. If the application contains any such trade secret or other confidential or proprietary information, it must be accompanied by a written request to OPWDD in the application not to disclose such information, stating with particularity the reasons why the information should not be available for disclosure. OPWDD reserves the right to determine upon written notice to the Applicant whether such information qualifies for the exemption from disclosure under the law.



- 4.1.5. OPWDD has sole discretion regarding the number of grants and the grant amounts awarded, which are based on applications received and awarded in accordance with Section 4: Evaluation of Applications of this RFA.

#### **4.2. Format and Content Evaluation**

- 4.2.1. Applicants must provide all information requested in the Grants Gateway Application. This includes the Cover Letter, eFMAP RFA Attachment documents, Diversity Questionnaire, Program Specific Questions, Work Plan, and Cost Proposal.
- 4.2.2. Applications will be examined to determine compliance with the requirements of this RFA. Failure to meet any format or content requirement specified in this RFA may result in an Applicant's removal from further consideration. The Applicant will be given an opportunity to correct any error of a procedural non-substantive nature, if OPWDD determines the correction does not provide a competitive advantage.
- 4.2.3. The maximum total score for this RFA is 100 points.
- 4.2.4. The maximum number of points that will be given to each section in scoring the application is identified in parentheses. All responses to the RFA will be subject to verification for accuracy.

#### **4.3. Cover Letter (Pass/Fail)**

- 4.3.1. The Cover Letter is an integral and mandatory part of the application. The Cover Letter Template is included in Pre-Submission Uploads tab in Grants Gateway. Applicants must complete and upload the Cover Letter Template in its entirety to the designated line of the Pre-Submission Uploads tab in Grants Gateway.
- 4.3.2. The Cover Letter Template includes all Minimum Qualifications criteria, per Section 1.3 of this RFA, and the Applicant must acknowledge they meet all criteria **by checking the box to the left of each criterion**. If an Applicant does not complete the Cover Letter in its entirety, their application will be removed from further consideration.
- 4.3.3. The Cover Letter must be accompanied with the completed eFMAP RFA Attachment documents and other documents as indicated in Grants Gateway for the application to be considered complete for review. These documents must be uploaded to the designated line of the Pre-Submission Uploads tab of the Opportunity.

#### **4.4. Technical Proposal Evaluation (70 points)**

- 4.4.1. Applicants may achieve a maximum of 70 points for the Technical Proposal component of their application.
- 4.4.2. The Technical Proposal includes the following components:
  - 4.4.2.1. Program Specific Questions, including the Diversity Practice Questionnaire as provided in Pre-Submission Uploads in Grants Gateway; and



4.4.2.2. Work Plan Template.

**4.5. Cost Proposal Evaluation (30 points)**

~~4.5.1. Applicants must utilize and complete the Cost Proposal Template provided in Pre-Submission Uploads tab in Grants Gateway.~~

The Cost Proposal and Cost Proposal Instructions have been revised to accommodate the total cost of a program and to allow applicants the ability to delineate other sources of revenue separate from costs being requested under the funds allocated for this opportunity.

Applicants MUST utilize and complete the Revised Cost Proposal Template located at <https://opwdd.ny.gov/procurement-opportunities/grant-opportunity-supportive-residential-habilitation-transformation>.

~~4.5.2. The Cost Proposal must be uploaded to the Pre-Submission Uploads tab of the Grant Opportunity in the designated line.~~

Applicants must complete and upload the Revised Cost Proposal and upload it to the Cost Proposal field located on the Pre-Submission Uploads page of the Upload Properties tab in Grants Gateway. Documents will not be accepted if emailed.

4.5.3. OPWDD's review will include an assessment of the cost categories for reasonableness and appropriateness. The Applicant should be as specific as possible when describing the anticipated costs associated with each operational element of their Cost Proposal, provide justifications for each cost, and how each line item will be phased in or required at start up.

**5. Selection and Notification of Award**

**5.1.** Maximum Score: The maximum total score for this RFA is 100 points if an applicant receives full points for the combined Technical and Cost Evaluations. Responsible and responsive applicants with the highest score(s) will be selected for award.

**5.2.** Evaluation and Notification: Upon completion of the evaluation process outlined in Section 4 of this RFA, the Evaluation Team will make a recommendation to the Commissioner of OPWDD for award. The successful applicant(s) will be notified through a tentative award letter issued by OPWDD on approximately the Preliminary Contract Award Announcement Date as listed in Section 1.2, Key Events and Dates, of this RFA.

**6. Payment and Reporting Requirements**

**6.1. Payment Terms:**

If awarded a contract resulting from this RFA, the successful Applicant must agree to accept advance payments, which OPWDD in its sole discretion may make, and which shall be recouped in accordance with the following:

6.1.1. Refunds



- 6.1.1.1. In the event that the successful Applicant must make a refund to the State for Contract-related activities, including repayment of a portion of the advance or an audit disallowance, or for deliverables found to be incomplete or unacceptable, payment must be made payable as set forth in this Section of this RFA. The successful Applicant must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Contact at the address specified in Section 1 of this RFA.
- 6.1.1.2. If at the end or termination of the Contract, there remains any unexpended balance of the monies advanced under the Contract in the possession of the successful Applicant, the successful Applicant shall make payment within forty-five (45) calendar days of the end or termination of the Contract. In the event that the successful Applicant fails to refund such balance the State may pursue all available remedies.
- 6.1.2. Outstanding Amounts Owed to the State
  - 6.1.2.1. Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the successful Applicant may be recouped against future payments made under the resultant Contract to the successful Applicant. The recoupment generally begins with the first payment made to the successful Applicant following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the successful Applicant shall make payment as provided in this Section of this RFA herein.
- 6.1.3. Set-Off Rights
  - 6.1.3.1. 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 successful Applicant under the Contract up to any amounts due and owing to the State with regard to the Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the 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 setoff pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.
- 6.2. Electronic Payment (ePayment) Program**
  - 6.2.1. If awarded a Contract under this RFA, the successful Applicant must enroll in the NYS Electronic Payment (ePayment) Program through OSC. ePay transfers payments directly into your bank account sooner than you would receive a payment by check. Upon execution of the Contract, the successful Applicant will need to submit an Electronic Payment Authorization Form. For questions, you may contact the OSC Vendor Management Unit at [epayments@osc.ny.gov](mailto:epayments@osc.ny.gov).



- 6.2.2. The Electronic Payment Authorization form must be completed and submitted to OSC upon Contract execution. The form is available at:  
<https://www.osc.state.ny.us/files/vendors/2017-11/vendrep-government-account-authorization.pdf>.
- 6.3. Reporting:**  
The successful Applicant will be required to submit periodic reports by the agreed upon work schedule in a manner satisfactory and acceptable to the OPWDD. Reporting will include, at a minimum, the following four components:
- 6.3.1. **Data and Metrics Report:** It is essential that all programs continue to evaluate service needs and outcomes through the ongoing process of data collection and evaluation, both for reporting purposes and to improve service effectiveness over time. The successful Applicant must report on metrics that will measure the funds' impact on the individuals supported.
- 6.3.1.1. The successful Applicant will report these metrics through the forms and/or formats developed and distributed by OPWDD at a frequency requested through March 31, 2024 or later as determined by OPWDD regardless of when grant funds have been expended or the term of the contract.
- 6.3.1.2. Reported data must include a quantitative evaluation of the funding's impact on specific individuals supported, which may include, but is not limited to:
- 6.3.1.2.1. The total number of individuals (and identifying information) who benefited from the expended grant funds;
- 6.3.1.2.2. The number of individuals who moved to a more integrated residential setting of their choosing;
- 6.3.1.2.3. The number of transitions, specifying the type of transitions (e.g., Supervised to Supportive, Supportive to Family Care, Family Care to housing subsidy, placed from Certified Residential Opportunities, lateral transitions);
- 6.3.1.2.4. The number of new Supervised IRAs and/or Family Care opportunities created;
- 6.3.1.2.5. Quality of life outcomes (e.g., increased independence, increased community participation);
- 6.3.1.2.6. Medicaid utilization costs (e.g., number of ER/hospital admissions);
- 6.3.1.2.7. Participant satisfaction;
- 6.3.1.2.8. Participant demographic data.
- 6.3.1.3. Additional information regarding these or other data points will be provided to the successful Applicant.
- 6.3.2. **Progress Report:** The successful Applicant must provide OPWDD with a written progress reporting using the forms and/or formats developed and distributed by OPWDD at a frequency requested through March 31, 2024 or later as determined by OPWDD regardless



of when grant funds have been expended or the term of the contract. The report will may include, but is not limited to, the following qualitative information:

- 6.3.2.1. Summary of the work performed during the period;
- 6.3.2.2. Progress toward attaining the specific goals enumerated in the Applicant's Technical Proposal;
- 6.3.2.3. Review of the programs, technologies, policies, or practices used, created, changed, improved, and/or implemented, including their impact on the following:
  - 6.3.2.3.1. Individual independence;
  - 6.3.2.3.2. Person-centered service delivery.
- 6.3.2.4. This review must include descriptions of promising practices, lessons learned, challenges, and how challenges were overcome.
- 6.3.2.5. Additional information regarding specific reporting areas will be provided to the successful Applicant.
- 6.3.3. Final Progress Report: The successful Applicant will provide OPWDD with a written final report using the forms and/or formats developed and distributed by OPWDD at a frequency requested through March 31, 2024 or later as determined by OPWDD regardless of when grant funds have been expended or the term of the contract.
  - 6.3.3.1. The deadline for the submission of the final report shall be set forth in the Contract resulting from this RFA. OPWDD shall complete its audit and notify the successful Applicant of the results no later than the date set forth in the Contract. Payment shall be adjusted by the OPWDD to reflect only those services/expenditures that were made in accordance with the contract terms and conditions.
  - 6.3.3.2. The successful Applicant shall submit a detailed comprehensive final progress report not later than the date set forth in the Contract, summarizing the work performed during the entire Contract Term in the forms and formats required.
  - 6.3.3.3. Final Reports must include, but is not limited to, aggregated data points and reporting items described under Section 6.3.1, Data and Metrics, and Section 6.3.2, Progress Report, of this RFA. Additional reported items must include, but are not limited to:
    - 6.3.3.3.1. Individual outcomes;
    - 6.3.3.3.2. Program/organizational outcomes;
    - 6.3.3.3.3. Barriers and challenges encountered and how they were overcome if applicable;
    - 6.3.3.3.4. How supports and continuation of activities will be sustained if applicable; and



6.3.3.3.5. Recommendations.

**6.4. Consolidated Fiscal Report:**

The successful Applicant will submit the Consolidated Fiscal Report on an annual basis, in accordance with the time frames designated in the CFR manual.

**6.5.** Through submission of an application, the Applicant is acknowledging and agrees to adhere to any and all reporting requirements should a grant be awarded.

**7. Procurement and Contracting Provisions:** The following administrative considerations apply to this RFA and the contract(s) to be entered into with the successful applicant(s):

**7.1. Contract:**

Unless modified as provided herein, this contract term shall be as indicated Section 1 of this RFA.

7.1.1. The successful applicant(s) will be required to sign and comply with the terms and conditions delineated within the State of New York Master Contract for Grants, provided in Exhibits in Grants Gateway.

7.1.2. Contract Termination:

7.1.2.1. The OPWDD retains the right to cancel the contract resulting from this RFA without reason, provided that the Contractor is given at least thirty (30) days' notice of OPWDD's intent to cancel. This provision should not be understood as waiving the OPWDD's right to terminate the contract for cause or stop work immediately for unsatisfactory work but is supplementary to that provision.

7.1.2.2. The OPWDD reserves the right to stop the work covered by this RFA and the ensuing contracts at any time that it is deemed the successful applicant is unable or incapable of performing the work to OPWDD's satisfaction. In the event of such stopping, the OPWDD shall have the right to arrange for the completion of the work in such a manner as it may deem advisable and if the cost thereof exceeds the amount of the offer, the successful applicant and its surety shall be liable to the State of New York for any such cost on account thereof. In the event that the OPWDD stops the work as provided thereof, together with the reason thereof, and the Contractor shall have ten (10) working days to respond thereto before any such stop order shall become effective.

7.1.3. Contract Amendment Process:

During the term of the contracts, the contracts may be amended as new laws or regulatory mandates are issued affecting the services and provisions under the Contract resulting from this RFA. OPWDD reserves the right to consider amendments which are not specifically covered by the terms of the contracts but are judged to be in the best interest of the OPWDD.

**7.2. Compliance with HIPAA:** (Health Insurance Portability and Accountability Act of 1996) and HI-Tech (Health Information Technology for Economic and Clinical Health Act of 2009)



7.2.1. Health Information Portability and Accountability Act (HIPAA)/ Mental Hygiene Law Section 33.13.

Health Information Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information (The Privacy Rule) was established by the Federal Department of Health and Human Services (HHS). The Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) provides comprehensive federal protection for the privacy of health information. The Privacy Rule is carefully balanced to provide strong privacy protections that do not interfere with patient access to, or the quality of, health care delivery. HIPAA has an impact upon how OPWDD and contractors will deal with protected health information of our individuals with intellectual/developmental disabilities. New York State Mental Hygiene Law Section 33.13 also requires disclosure of clinical records to be limited to that information necessary in light of the reason for disclosure.

7.2.2. Compliance:

To the extent Contractor or its Subcontractor(s) create, receive, maintain, or transmit protected health information on behalf of the State pursuant to their responsibilities under this Contract, Contractor and such Subcontractors must comply with HIPAA and HI-TECH, and execute the HIPAA and HI-TECH Compliance Certification Form provided by the OPWDD. The successful Applicant must agree to Exhibit II, OPWDD HIPAA Business Association Agreement. The successful Applicant must notify OPWDD and ITS within two hours of any suspected breach of security involving an individual's personal or health information.

7.3. **Public Officers' Law:**

New York State Public Officers Law Section 73 (8) bars former state officers and employees from appearing or practicing or rendering any services for compensation in relation to any matter before their former state agency for a period of two years from the date of their termination. Additionally, there is a permanent bar against any such activity before any state agency in relation to any case, application, proceeding or transaction with which such officer or employee was directly concerned and personally participated or which was under his or her active consideration.

7.4. **Restriction on Contact with OPWDD Employees:**

This solicitation includes and imposes certain restrictions on communications between OPWDD and bidders during the procurement process. From the date of issuance of this RFA until contracts are awarded and fully executed, applicants and prospective applicants are restricted from making ANY contact, as defined in State Finance Law §139-j (1) (c), relating to this procurement other than written contact (e-mail) with the OPWDD designated contact as specified in Section 1 of this RFA, unless it is a contact that is included among certain exceptions set forth in State Finance Law §139-j (3) (a).

7.5. **Security of Application:**

7.5.1. Prior to contract award, the content of each application will be held in confidence and no details of any application will be divulged to any other applicant. Information communicated



to OPWDD by applicants prior to completion of contract award and any other required New York State contract approvals shall be maintained as confidential, except as required by Federal or State law, including but not limited to the Freedom of Information Law. Notwithstanding the foregoing, OPWDD may disclose an application to any person for the purpose of assisting in evaluating the application or for any other lawful purpose.

- 7.5.2. Following final contract approval, disclosure of the contents of all applications and pre-award communications shall be available to the public to the extent required by Federal or State law, including but not limited to the Freedom of Information Law.
- 7.5.3. All applications, the contract, and related documentation will become OPWDD records, which, in accordance with the Freedom of Information Law, will be available to the public after the contract award. Any portion of the application that an applicant believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law, must be clearly and specifically designated in the application. If OPWDD agrees with the proprietary claim, the designated portion of the application will be withheld from public disclosure unless legally required to be released. Blanket assertions of proprietary material will not be accepted, and failure to specifically designate proprietary material will be deemed a waiver of any right to confidential handling of such material.
- 7.6. **Confidentiality of Information:** The successful applicant shall treat all information, in particular information relating to OPWDD service recipients and providers, obtained by it through its performance under contract, as confidential information, to the extent that confidential treatment is provided under New York State and Federal law, and shall not use any information so obtained in any manner except as necessary to the proper discharge of its obligations under the contract. The successful applicant is responsible for informing its employees of the confidentiality requirements of this agreement.
- 7.7. **Publication Rights:** Materials/documents produced by the successful applicant in the fulfillment of its obligations under contract with the OPWDD become the property of OPWDD unless prior arrangements have been made with respect to specific documents. The successful applicant may not utilize any information obtained via interaction with OPWDD in any public medium (media - radio, television), (electronic - internet), (print - newspaper, policy paper, journal/periodical, book, etc.) or public speaking engagement without the official prior approval of OPWDD Senior Management. The successful applicant bears the responsibility to uphold these standards rigidly and to require compliance by their employees and subcontractors. Requests for exemption to this policy shall be made in writing, at least 14 days in advance, to the Designated Contact as specified in Section 1 of this RFA.
- 7.8. **Additional General Duties and Responsibilities**
  - 7.8.1. The successful applicant must also:
  - 7.8.2. Maintain a level of liaison and cooperation with the OPWDD necessary for the proper performance of all contractual responsibilities;

- 7.8.3. Agree that no aspect of its performance under the contract to be entered into as a result of this RFA will be contingent upon State personnel, or the availability of State resources, with the exception of all proposed actions of the successful applicant specifically identified in the contract as requiring OPWDD's approval, policy decisions, policy approvals, exceptions stated in the contract to be entered into can be expected in such a contractual relationship or the equipment agreed to by the OPWDD as available for the project completion, if any.

## **7.9. Information Security Breach and Notification Act**

- 7.9.1. The New York State, "Information Security Breach and Notification Act" also known as the "Internet Security and Privacy Act" took effect December 9, 2005. The Legislature and Governor have enacted the Law in response to past and continuing identity theft and security breaches affecting thousands of people. The Law requires any person or business that conducts business in New York State and that owns or licenses computerized data that includes private information (including but not necessarily limited to social security numbers, credit and debit card numbers, driver's license numbers, etc.) must disclose any breach of that private information to all individuals affected or potentially affected in an expeditious manner. Contractors shall comply with the provisions of the New York State Information Breach and Notification Act. Contractors shall be liable for the costs associated with such breach if caused by the Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the applicant's agents, officers, employees or subcontractors. You may view a copy of the Law at <http://public.leginfo.state.ny.us/MENUGETF.cgi?COMMONQUERY=LAWS> by searching for "INTERNET SECURITY AND PRIVACY." The law is found at Article 2 of the State Technology Law and at Article 39-F of the General Business Law.

## **7.10. Work Outside Contract**

- 7.10.1. Any and all work performed outside the scope of the grant contract awarded pursuant to the RFA, with or without consent of OPWDD, shall be deemed by OPWDD to be gratuitous and not subject to charge by the Contractor.

## **7.11. Limits on Administrative Expenses and Executive Compensation**

If the successful applicant is a "covered provider" within the meaning of 14 NYCRR § 645.1(d) at any time during the term of the contract to be awarded pursuant to this RFA, then during the period when such applicant is such a "covered provider":

- 7.11.1. The applicant will be required to comply with the requirements set forth in 14 NYCRR Part 645, and any amendments to such Part 645 that are effective during the term of the contract;
- 7.11.2. The applicant's failure to comply with any applicable requirement of 14 NYCRR Part 645, including but not limited to the restrictions on allowable administrative expenses, the limits on executive compensation, and the reporting requirements, may be deemed a material breach of the contract and constitute a sufficient basis for, in the discretion of OPWDD, termination for cause, suspension for cause, or the reduction of funding provided pursuant to the contract; and



- 7.11.3. The applicant will be required to include the following provision in any agreement with a subcontractor or agent to provide services under the contract:

[Name of subcontractor/agent] acknowledges that it is receiving “State funds” or “State-authorized payments” originating with or passed through the New York State Office for People with Developmental Disabilities in order to provide program or administrative services on behalf of [Name of CONTRACTOR]. If at any time during the life of this Agreement [Name of subcontractor/agency] is a “covered provider” within the meaning of Section 645.1(d) of OPWDD regulations, [Name of subcontractor/agent] shall comply with the terms of 14 NYCRR Part 645, and any amendments to such Part 645 that are effective during the term of the contract. A failure to comply with 14 NYCRR Part 645, where applicable, may be deemed a material breach of this Agreement constituting a sufficient basis for suspension or termination for cause. The terms of 14 NYCRR Part 645, as amended, are incorporated herein by reference.

**7.12. MWBE/EEO/SDVOB Requirements and Procedures**

Contractor Requirements and Procedures for Participation by New York State-Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women and Service-Disabled Veteran-Owned Business Enterprises

7.12.1. Business Participation Opportunities for MWBEs

- 7.12.1.1. Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations OPWDD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OPWDD contracts.

- 7.12.1.2. The Office for People With Developmental Disabilities (OPWDD) has an overall goal of 30 percent for MWBE participation, 17 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 13 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this solicitation, the respondent agrees that OPWDD may withhold payment pursuant to any Contract awarded as a result of this solicitation pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how OPWDD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

- 7.12.1.3. The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be



deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract]

- 7.12.1.3.1. In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this solicitation, such finding constitutes a breach of contract and OPWDD may withhold payment as liquidated damages.
- 7.12.1.3.2. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- 7.12.1.4. By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the MWBE Compliance Unit at [OPWDD.SM.Minority.women.business.enterprise@opwdd.ny.gov](mailto:OPWDD.SM.Minority.women.business.enterprise@opwdd.ny.gov).
- 7.12.1.5. Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:
  - 7.12.1.5.1. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OPWDD for review and approval.
  - 7.12.1.5.2. OPWDD will review the submitted MWBE Utilization Plan and advise the respondent of OPWDD acceptance or issue a notice of deficiency within 30 days of receipt.
  - 7.12.1.5.3. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [OPWDD.SM.Minority.women.business.enterprise@opwdd.ny.gov](mailto:OPWDD.SM.Minority.women.business.enterprise@opwdd.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OPWDD to be inadequate, OPWDD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- 7.12.1.6. OPWDD may disqualify a respondent as being non-responsive under the following circumstances:



- 7.12.1.6.1. If a respondent fails to submit an MWBE Utilization Plan;
- 7.12.1.6.2. If a respondent fails to submit a written remedy to a notice of deficiency;
- 7.12.1.6.3. If a respondent fails to submit a request for waiver; or
- 7.12.1.6.4. If OPWDD determines that the respondent has failed to document good faith efforts.
- 7.12.1.7. The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OPWDD, but must be made no later than prior to the submission of a request for final payment on the Contract.
- 7.12.1.8. The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to OPWDD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.
- 7.12.2. Equal Employment Opportunity Requirements
  - 7.12.2.1. By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of [Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women OR Authority equivalent to Appendix A]. The respondent is required to ensure that it and any subcontractors awarded a subcontract 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 respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.
  - 7.12.2.2. The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form # 4, to OPWDD with its bid or proposal.
  - 7.12.2.3. If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by OPWDD on a QUARTERLY basis during the term of the Contract.
  - 7.12.2.4. Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment



because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

**7.12.3. Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance**

7.12.3.1. Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified New York State Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The New York State Office for People with Developmental Disabilities (“OPWDD”) recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OPWDD contracts.

7.12.3.2. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOB’s in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

7.12.3.3. The requirements under this program as they pertain to this RFA are detailed in eFMAP RFA Attachment documents, along with the “Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance” Form, which Offerers must submit with their Cover Letter as required in Section 4.3 of this RFA. The SDVOB goal established under this RFA is 0 percent (0%).

**7.13. Subcontracting**

The application must indicate if any part of the applicant’s program will be provided by a subcontractor (including an organization or an individual who is an independent contractor). To the extent subcontractors have been identified, please name the individual or organization that would be the subcontractor, describe the qualifications and scope of services to be provided by the contractor, and provide a statement of the percentage of the work to be performed by each subcontractor. Subcontractors must also meet the Minimum Qualifications for Selection set forth in Section 1.3 of this RFA.

**7.14. OPWDD’s Rights as to All Applications**

OPWDD reserves all rights with respect to applications, including, but not limited to:

7.14.1. Cancel this RFA, in whole or in part, and reject any and all applications received in response to this RFA or choose to make no award;



- 7.14.2. Change any of the scheduled dates as provided in Section 1 of this RFA, Key Dates and Events;
- 7.14.3. Modify the RFA;
- 7.14.4. Prior to the Application Due Date, direct applicants to submit application modifications addressing subsequent RFA amendments;
- 7.14.5. Prior to the Application Due Date, amend the RFA to correct errors or oversights, or to supply additional information, as it becomes available;
- 7.14.6. Seek clarifications and revision of applications;
- 7.14.7. Withdraw the RFA at any time in OPWDD's sole discretion;
- 7.14.8. Disqualify any applicant whose conduct and/or application fails to conform to the requirements of this RFA;
- 7.14.9. Make an award under the RFA, in whole or in part;
- 7.14.10. Eliminate any mandatory, non-material RFA requirements that cannot be complied with by all the prospective applicants;
- 7.14.11. Waive any requirements that are not material;
- 7.14.12. Waive minor irregularities and/or omissions in bids, if in the best interest of OPWDD;
- 7.14.13. Waive any immaterial deviation or defect in a proposal. A waiver of immaterial deviation or defect shall in no way modify the RFA documents or excuse an Applicant from full compliance with the RFA requirements;
- 7.14.14. Rescind a contract award and begin negotiations with the next highest-scoring Applicant if a signed contract substantially in accordance with RFA Exhibit I: Master Contract for Grants, is not executed within 30 days of Notification of Award
- 7.14.15. Require an Applicant to clarify its Application to assure a full understanding of its Application and to request revisions to all Applications from vendors susceptible of award of the contract. Any request for clarification or revision is solely at the discretion of the OPWDD;
- 7.14.16. Correct any arithmetical errors or other apparent errors in any Application and, in the event that the fees or costs in two or more Applications are not comparable, to make appropriate adjustments to render the fees and costs comparable;
- 7.14.17. Require an Applicant to demonstrate, to the satisfaction of OPWDD, any information presented as a part of its Application;



- 7.14.18. Negotiate with the successful Applicant within the scope of the RFA in the best interests of OPWDD;
- 7.14.19. Proceed to the next highest-scoring Applicant in the event that an Applicant who had achieved best value prior to contract award cannot satisfy the requirements as stated in this RFA;
- 7.14.20. If a contract is terminated within 12 months of making award, the OPWDD reserves the right, with the approval of the New York State Attorney General and the Office of the State Comptroller, to award a contract to the next highest ranked Applicant;
- 7.14.21. In its sole discretion, reject illegible, incomplete, or vague bids;
- 7.14.22. Re-solicit offers from the vendor community by re-publishing and re-advertising this RFA at any time; and
- 7.14.23. The OPWDD shall have unlimited rights to disclose or duplicate, for any purpose whatsoever, all information or other work product developed, derived, documented, or furnished by the Applicant under any Agreement resulting from this RFA.
- 7.14.24. Reject any or all applications received in response to this RFA;
- 7.14.25. Negotiate with the successful applicant within the scope of the RFA in the best interests of the State;
- 7.14.26. Utilize any and all ideas submitted in the applications received;
- 7.14.27. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the Application Due Date;
- 7.14.28. Use application information obtained through site visits, management interviews, and the OPWDD's investigation of an Applicant's qualifications, experience, ability, or financial standing, and any material or information submitted by the Applicant in response to the OPWDD's request for clarifying information in the course of evaluation and/or selection under the RFA;
- 7.14.29. Prior to review of the application, amend the RFA specifications to correct errors or oversights, or to change any of the scheduled dates, or to supply additional information, as it becomes available. Modifications to this RFA shall be made by issuance of amendments and/or addenda.  
  
The OPWDD's right to issue modifications of this RFA permits any addition or deletion of requirements as the OPWDD may deem appropriate.
- 7.14.30. Prior to the bid opening, direct Applicants to submit application modifications addressing subsequent RFA amendments;



- 7.14.31. 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 an application and/or to determine an applicant's compliance with the requirements of the solicitation;
- 7.14.32. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder; and
- 7.14.33. Verify information provided in applications; reject any application that contains false or misleading statements, or which provides references that do not support an attribute, condition, or qualification claimed by the applicant.

**7.15. Debriefing**

Once an award has been made, applicants may request a debriefing of their application. Please note that debriefings will be limited solely to the strengths and weaknesses of the applicant's own application and will not include discussion of other Applicants' applications.

- 7.15.1. 3SFL §163(9) (c) states, in part, "A state agency shall, upon request, provide a debriefing to any unsuccessful Applicant that responded to a request for proposal or an invitation for bids. A debriefing shall be requested by the unsuccessful Applicant within fifteen calendar days of release by the state agency of a notice in writing or electronically that the Applicant's offer is unsuccessful.
- 7.15.2. Requests for debriefing must be submitted to the OPWDD Designated Contact as specified in Section 1 of this RFA.

**7.16. The OPWDD Bid Protest Policy - Formal Written Protests**

- 7.16.1. Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any Vendor or prospective Vendor who believes that there are errors or omissions in the procurement process, or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to the OPWDD and request administrative relief concerning such action ("formal protest").
- 7.16.2. A formal protest must be submitted in writing to the OPWDD, at Marc.L.Kleinhenz@opwdd.ny.gov. A formal protest must identify the name of the RFA, the award date, and include a statement of all legal and/or factual grounds for disagreement with an OPWDD specification or purchasing decision, a description of all remedies or relief requested, and copies of all applicable supporting documentation.
- 7.16.3. Deadline for Submission of Formal Protests
  - 7.16.3.1. The OPWDD must receive formal protests concerning errors, omissions, or prejudice, including patently obvious errors in the bid specifications or documents at least ten (10) calendar days before the date set in the solicitation for receipt of bids.



- 7.16.3.2. The OPWDD must receive formal protests concerning a pending contract award within seven (7) calendar days after the protesting party (“protestor”) knows or should have known of the facts that form the basis of the protest.
- 7.16.4. Review and Final Determination of Protests
  - 7.16.4.1. Protests will be resolved through written correspondence. However, the protestor may request a meeting to discuss a formal protest, or the OPWDD may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the protestor or the OPWDD may elect to decline such a meeting.
  - 7.16.4.2. Where further formal resolution is required, the Commissioner or Associate Commissioner shall designate an OPWDD employee (“designee”) to determine and undertake the initial resolution or settlement of any protest.
  - 7.16.4.3. The designee will conduct a review of the records involved in the protest and provide a memorandum to the Commissioner or Associate Commissioner summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Commissioner or Associate Commissioner shall: (i) evaluate the procurement team’s findings and recommendations, (ii) review the materials presented by the protesting party and/or any materials required of or submitted by other Vendors, (iii) if necessary, consult with agency Counsel, and (iv) prepare a response to the protest.
  - 7.16.4.4. A copy of the protest decision stating the reason(s) upon which it is based shall be sent to the protester or its agent within 45 calendar days of receipt of the protest, except that upon notice to the protester, such period may be extended. The protest decision is final and will be recorded and included in the procurement record.

**7.17. Certification of compliance with state finance law**

By submission of this RFA, each Applicant and each person signing on behalf of any Applicant certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the Applicant has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law. Contractor certification of compliance with STF §139-I is included in the eFMAP RFA Attachment documents in Pre-Submission Uploads tab in Grants Gateway, Sexual Harassment Policy Certification, to include with their Application as outlined in Section 4.3 of this RFA.

**7.18. Executive order no. 177 certification**

- 7.18.1. The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.



- 7.18.2. The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.
- 7.18.3. Generally, the Human Rights Law applies to:
- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
  - employers with fewer than four employees in all cases involving sexual harassment; and,
  - any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion, or national origin.
- 7.18.4. In accordance with Executive Order (EO) No. 177, the Applicant must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Executive Order 177 Certification is included in eFMAP RFA Attachment documents in the Pre-Submission Uploads tab in Grants Gateway and must be completed and included with their Cover Letter as outlined in Section 4.3 of this RFA.
- 7.18.5. Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.
- 7.19. Conflicts of interest**
- 7.19.1. The Applicant must complete and submit the Vendor Assurance of No Conflict of Interest or Detrimental Effect form provided in eFMAP RFA Attachment document in the Pre-Submission Uploads tab in Grants Gateway, with their Application as outlined in Section 4.3 of this RFA and be signed by an authorized executive or legal representative, attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with, the State of New York, and that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.
- 7.19.2. The Contractor hereby reaffirms the attestations made in its application and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the OPWDD immediately of any actual or potential conflicts of interest.



7.19.3. In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to the OPWDD, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the Subcontractor. The Contractor shall also require in any subcontracting agreement that the Subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the OPWDD a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its Subcontractors prior to entering into a subcontract.

7.19.4. The OPWDD and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The OPWDD will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgement of the OPWDD, a real or potential conflict of interest cannot be cured.

#### **7.20. Waiver of rights**

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

#### **7.21. Prime contractor responsibilities**

7.21.1. In the event the selected Applicant's application includes the provision of goods for services by another firm or manufacturer, it shall be mandatory for the selected Applicant to assume full responsibility for the delivery, installation, maintenance, and support for such items described in the proposal. Should the selected Applicant seek external financing, the OPWDD reserves the right to approve the assignment of the contract for financing purposes. In any event, the OPWDD will contract only with the selected Applicant, not the Applicant's financing institution or subcontractors. The OPWDD shall consider the selected Applicant to be the sole contractor with regard to all provisions of the contract resulting from this RFA.

7.21.2. Prior written approval by the OPWDD shall be required for all subcontracts entered into by any Applicant selected under this RFA. Copies of subcontracts must be supplied to the OPWDD prior to their approval. Any subcontract related to performance of the contract resulting from this RFA shall be subject to the provisions of law set forth in Sections 220, 220-d, and 220-e of the Labor Law of the State of New York, Articles 15 of the Executive Law of the State of New York.

#### **7.22. Public Information and Freedom of Information Law**

7.22.1. Disclosure of information related to this procurement and the resulting Contract shall be permitted, consistent with the laws of the State of New York and specifically FOIL. The OPWDD shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this procurement that are exempt from disclosure under FOIL.

Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Contractor upon submission, in accordance with the RFA provisions. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of: (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of FOIL. Acceptance of the identified information by the OPWDD does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the OPWDD.

### **7.23. Legal Requests and Release of State Data to Third Parties Prohibited**

- 7.23.1. Except otherwise required by law, Contractor shall not disclose State data to a third party. Except where expressly prohibited by law, Contractor shall promptly notify the State of any subpoena, warrant, judicial, administrative, or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a “Demand”) that it receives and which relates to or requires production of the information or data Contractor is processing or storing on your behalf. If Contractor is required to produce information or data in response to a Demand, Contractor will provide the State with the information or data in its possession that it plans to produce in response to the Demand prior to production of such information or data. Except as otherwise required by law, Contractor shall provide the State reasonable time to assert its rights with respect to the withholding of such information or Data from production. If the State is required to produce information or data in response to a Demand, Contractor will, at the State’s request and unless expressly prohibited by law, produce to the State any information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that Contractor has no responsibility to interact directly with the entity making the Demand. The parties agree that the State’s execution of this agreement does not constitute consent to the release or production of State data or information.

### **7.24. Ethics Compliance**

- 7.24.1. Contractor, its officers, employees, agents, and subcontractors (if any) shall comply with the requirements of Public Officers Law §73 and §74, and other State codes, rules, and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.
- 7.24.2. Contractors, consultants, vendors, and subcontractors may hire former State Agency employees. However, as a general rule, and in accordance with New York Public Officers Law, former employees of the State Agency may neither appear nor practice before the State Agency, nor receive compensation for services rendered on a matter before the State Agency, for a period of two years following their separation from State Agency service. In addition, former State Agency employees are subject to a “lifetime bar” from appearing



before the State Agency or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with the State Agency.

7.24.3. The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics or its predecessors (collectively, the “Ethics Requirements”). The Contractor certifies that all of its employees, and those of its Subcontractors, who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State who will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor, if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract, at any time, if any work performed hereunder is in conflict with any of the Ethics Requirements.

**7.25. Most Favorable Terms and Best Pricing**

Contractor agrees that all fees, pricing, terms, and warranties provided by the Contractor under the Contract are substantially similar to the best equivalent terms being offered by the Contractor to any entity similarly situated to the State for substantially similar services or products. If during the term of the Contract, the Contractor enters into an arrangement with any similarly situated entity for substantially similar services or products, with better pricing or terms that are more favorable, Contractor hereby agrees to amend the Contract to provide the same to the State.

**7.26. Transfer of Contract**

The OPWDD may transfer/assign the Contract to another State Agency or entity, at its sole discretion, by informing Contractor in writing of such a transfer. Contractor shall execute any documents required to accomplish the transfer/assignments of the Contract. Contractor shall comply with any instructions from the OPWDD to accomplish the transfer/assignment of the Contract, at no additional cost to the State.

**7.27. Waiver**



No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by a party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver of, or excuse for any other, different, or subsequent breach. The rights, duties, and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity.

**7.28. Accessibility**

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

**7.29. Compliance with NYS Information Security Policies and Standards**

7.29.1. Contract shall comply fully with the requirements of the Information Security Breach and Notification Act, and all security procedures and policies of the State including, but not limited to, the following:

- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard
- Information Security Risk Management Standard
- Information Security Controls Standard
- Sanitization/Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard
- Secure System Development Life Cycle Standard
- Secure Configuration Standard
- Secure Coding Standard



7.29.2. ITS Security Policies and Standards may be found at:  
<http://www.its.ny.gov/tables/technologypolicyindex.htm/security>

**7.30. Right to Inspect**

The State, or contracted entities working on behalf of the state, has the right to review Contractor's procedures, practices, and controls related to the security of State data and information assets. Upon request, Contractor will, immediately or no later than five business days after the request, make available for review policies, procedures, practices, and documentation related to the protection of State data and information assets, including but not limited to that related to information security governance, network security, risk and compliance management policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any contract resulting from this RFA, or at any time during the Contract term. The State shall have the right to send its officers, employees, or contracted vendors working on behalf of the OPWDD to inspect Contractor's facilities and operations used to provide Contract services. On the basis of such inspection, the State may require Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

**7.31. Severability**

In the event that one or more of the provisions of the Contract shall, for any reason, be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

**7.32. Contractor's Insurance Requirements**

During the term of this Contract, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required by this Section. All insurance required by this Section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. The OPWDD, in its sole discretion, may accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Acceptance and/or approval by the OPWDD does not, and shall not, be construed to relieve the Contractor of any obligations, responsibilities, or liabilities under this Contract.



The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the term of the Contract.

- 7.32.1. General Conditions Applicable to Insurance. All policies of insurance required by this Section shall comply with the following requirements:
- 7.32.1.1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified in Section 7.31.2, Insurance Requirements
- 7.32.1.2. Policy Forms. Except as otherwise specifically provided herein, or agreed to in the Contract, all policies of insurance required by this Section shall be written on an occurrence basis.
- 7.32.1.3. Certificate of Insurance/Notices. The Contractor shall provide the OPWDD with a Certificate or Certificates of Insurance, in a form satisfactory to the OPWDD (e.g., an ACORD certificate), after renewal or upon request. Certificates shall reference the Contract number and shall name the New York State Office for People With Developmental Disabilities, 44 Holland Avenue, Albany, New York, 12229 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to the OPWDD and in accordance with the New York State Insurance Law (e.g., an ACCORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit, or exclusion to the policy that changes the coverage required by this Contract materially;
- Refer to this Contract by number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations/Locations/Vehicles Section: ***The State of New York, the New York State Office for People With Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 [covering ongoing operations] and CG 20 37 04 13 [covering completed operations]), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.***

Only original documents (Certificates and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent, or broker via email distribution or similar means will be accepted.

Except for: (i) Data Breach and Privacy/Cyber Liability coverage; (ii) Technology Errors and Omissions; and (iii) Crime insurance coverages, the OPWDD generally requires Contractors



to submit only certificates of insurance and additional insured endorsements, although the OPWDD reserves the right to request other proof of insurance. Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by the OPWDD. If an entire insurance policy is submitted but not requested, the OPWDD shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by the OPWDD does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

- 7.32.1.4. Forms and Endorsements. For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Contractor shall provide the OPWDD, after renewal or upon request, a Schedule of Forms and Endorsements and, upon request, all Forms and Endorsements, unless otherwise agreed to in the Contract. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Contract. Only original documents or electronic versions of the same that can be traced directly back to the insurer, agent, or broker via email distribution or similar means will be accepted.
- 7.32.1.5. Primary Coverage. All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State of New York, the New York State Office for People With Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees. Any other insurance maintained by the State of New York, the New York State Office for People With Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.
- 7.32.1.6. Breach for Lack of Proof of Coverage. The failure to comply with the requirements of this Section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the State of New York, the New York State Office for People With Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.
- 7.32.1.7. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval by the OPWDD. Such approval shall not be unreasonably withheld, conditioned, or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program, along with a description of that program, including but not limited to information regarding the use of a third-party administrator, shall be provided upon request.
- 7.32.1.8. Subcontractors. Prior to the commencement of any work by a subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this Section and maintain the same in force during the term of any work performed by that subcontractor.



- 7.32.1.9. Waiver of Subrogation. For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the State of New York, the New York State Office for People With Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to the OPWDD upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
- 7.32.1.10. Additional Insured. For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: The State of New York, the New York State Office for People With Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the OPWDD after renewal and/or upon request. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this Section had Contractor obtained such insurance policies.
- 7.32.1.11. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage, and limits of insurance), including proof that the excess/umbrella insurance follows forms, must be provided after renewal and/or upon request.
- 7.32.1.12. Notice of Cancellation or Non-Renewal. Policies shall be written to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide the OPWDD with a copy of any such notice received from an insurer, together with proof of replacement coverage that complies with the insurance requirements of this Contract.
- 7.32.1.13. Policy Renewal/Expiration. Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to the OPWDD. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to the OPWDD, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by the OPWDD.



7.32.1.14. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the OPWDD Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to the OPWDD as soon as possible, but in no event later than the following time periods:

- For certificates of insurance: five business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days
- For schedules of forms and endorsements and all forms and endorsements: 60 calendar days

Notwithstanding the foregoing, if the Contractor shall have requested the insurance documents promptly from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the OPWDD, the OPWDD shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

7.32.2. Insurance Requirements: Throughout the term of this Contract, the Contractor shall obtain and maintain in full force and effect, the following insurance, with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater.

7.32.2.1. Commercial General Liability Insurance: Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage, and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$2,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000
- Damage to Rented Premises \$ 50,000
- Medical Expenses \$ 5,000

Aggregate limits shall apply on a per-location basis, or as otherwise agreed to in the Contract. This aggregate limit applies separately to each location at which the insured works.

- Coverage shall include, but not be limited to, the following:
- Premises liability



- Independent contractors
- Blanket contractual liability, including tort liability of another assumed in any Contract resulting from this Solicitation
- Defense and/or indemnification obligations, including obligations assumed under this Contract
- Cross liability for additional insureds
- Explosion, collapse and underground hazards

7.32.2.2. Automobile Liability: Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

In the event that the Contractor does not own, lease, or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance but must attest to the fact that the Contractor does not own, lease, or hire any automobiles used in connection with performance under the Contract. If, however, during the term of the Contract, the Contractor acquires, leases, or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Section and must provide proof of such coverage to the OPWDD in accordance with the insurance requirements of the Contract.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Comprehensive Business Automobile Liability Insurance as required by this Contract, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by the OPWDD. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Section and provide proof of such coverage to the OPWDD in accordance with the insurance requirements of the Contract.

7.32.2.3. Data Breach and Privacy/Cyber Liability: Contractors are required to maintain, during the term of this Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data. Said insurance shall be maintained in the following limits, as applicable:



Data Breach and Privacy/Cyber Liability	
Software	\$1,000,000
Hardware	\$1,000,000
Implementation	\$1,000,000

*Note: See NYS-S14-002 Information Classification Standard or successor available at <http://www.its.ny.gov/tables/technologypolicyindex.htm> for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.*

Said insurance shall provide coverage for damages arising from, but not limited to, the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form)
- Privacy notification costs
- Regulatory defense and penalties
- Website media liability
- Cyber theft of customer’s property, including but not limited to money and securities

If the policy is written on a claims-made basis, Contractor must submit to the OPWDD an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

7.32.2.4. Technology Errors and Omissions: Contractors are required to maintain during the term of the Contract and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits, as applicable

Technology Errors and Omissions	
Software	\$1,000,000
Hardware	\$1,000,000
Implementation	\$1,000,000

**Note:** See NYS-S14-002 Information Classification Standard or successor available at <http://www.its.ny.gov/tables/technologypolicyindex.htm> for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract

Said insurance shall provide coverage for damages arising from computer-related services, including but not limited to:



- Consulting
- Data processing
- Programming
- System integration
- Hardware of software development
- Installation
- Distribution or maintenance
- Systems analysis or design
- Training
- Staffing or other support services
- Manufactured, distributed, licensed, marketed or sold cloud-computing services

The policy shall include coverage for third-party fidelity, including cyber theft.

If the policy is written on a claims-made basis, Contractor must submit to the OPWDD an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

7.32.2.5. Crime Insurance: Contractors are required to maintain, during the term of the Contract and as otherwise required herein, Crime Insurance. Said insurance shall be maintained in the following limits

Crime Insurance	
Software	\$2,000,000
Hardware	\$2,000,000
Implementation	\$2,000,000

Note: See NYS-S14-002 Information Classification Standard or successor available at <http://www.its.ny.gov/tables/technologypolicyindex.htm> for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.

Contractor must provide and maintain Crime Insurance coverage, on a “loss sustained form” or “loss discovered form,” providing coverage for Third-Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.



- The policy must include an extended reporting period of no less than one year with respect to events that occurred but were not reported during the term of the policy.
- Any warranties required by the Vendor's and Contractor's insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents, and employees) of the Vendor and Contractor as a result of this Contract.
- The policy shall include coverage for third-party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the State of New York, the New York State Office for People With Developmental Disabilities, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees as "Loss Payees" for all third-party coverage secured. An Endorsement naming as Loss Payees "The State of New York, the New York State Office for People With Developmental Disabilities, any entity authorized by law or regulation to use this Contract, and their officers, agents, and employees" shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

If the policy is written on a claims-made basis, Contractor must submit to OPWDD an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

- 7.32.2.6. Workers Compensation Insurance & Disability Benefits Coverage: Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of any contract renewal. Proof of workers' compensation and disability benefits coverage, or proof of exemption, must be submitted to the OPWDD at the time of policy renewal, contract renewal, and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. An ACCORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

Proof of Compliance with the Workers' Compensation Coverage Requirements:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form C-105.2 (9/07), Certificate of Workers' Compensation Insurance, sent to OPWDD by the Contractor's insurance carrier upon request, or if coverage is provided by the



New York State Insurance Fund, they will provide Form U-26.3 to OPWDD upon request from the Contractor; or

- Form SI-12, Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to OPWDD by the Contractor's insurance carrier upon request; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

7.32.3. An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook

### **7.33. State Vendor Responsibility Questionnaire**

7.33.1. The State conducts a review of prospective contractors (Proposers) and Subcontractors with anticipated expenditures at \$100k or more to provide reasonable assurances that the Proposer is responsive and responsible. A Vendor Responsibility Questionnaire (hereinafter "Questionnaire") is designed to provide information to assess a Proposer's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Proposer agrees to complete the Questionnaire fully and accurately. The Proposer acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Proposer is responsible and that the State will be relying upon the Proposer's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

7.33.2. The State recommends that each Proposer file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, Proposer should refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, <https://www.osc.state.ny.us/vendrep/> or to enroll, go directly to the VendRep System online at <https://www.osc.state.ny.us/state-vendors/vendrep/enroll-vendrep-system>. Proposers opting to complete the paper



questionnaire can access this form and associated definitions via the OSC website at: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) or by emailing the Designated Contact listed in Section 1 of this RFA.

- 7.33.3. NYS Vendor Responsibility Questionnaire Form must be completed and certified on-line or submitted with the Cover Letter as outlined in the RFA.
- 7.33.4. Contractor must update its Vendor Responsibility Questionnaire within 10 business days of the State's request that it do so.

