

# **EXHIBIT 10**



**Office of Business Operations & Procurement**

**Request for Proposal  
X002654**

**Healthcare Services at  
Long Island College Hospital  
and Purchase of Property**

**February 26, 2014  
Responses Due March 19, 2014**

**STATE UNIVERSITY OF NEW YORK (SUNY)  
SYSTEM ADMINISTRATION  
REQUEST FOR PROPOSAL X002654**

00384

**Description**

The State University of New York (“SUNY”) is requesting proposals from qualified parties to provide or arrange to provide health care services at the Long Island College Hospital (“LICH”) campus described at Section G of Part 2, below, (“LICH Campus”), consistent with the medical services described in this Request for Proposal (“RFP”) at Section A of Part 2, below, and consistent with the health care needs of the community as described in Section F of Part 2, below, and as may be further described during the mandatory Community Healthcare Meeting described in Section O of Part 2, below, and to purchase the LICH property, plant and equipment.

**IMPORTANT: ANY TRANSACTION RESULTING FROM THIS REQUEST FOR PROPOSAL  
MUST MEET ALL APPLICABLE LEGAL, REGULATORY AND JUDICIAL REVIEW AND  
APPROVAL REQUIREMENTS.**

**Important Dates**

<b><i>Mandatory Community Healthcare Meeting:</i></b>	<b><i>March 3, 2014, 5:00 pm EST</i></b>
<b><i>Mandatory Site Visit:</i></b>	<b><i>March 4 and 5, 2014</i></b>
<b><i>Questions Due:</i></b>	<b><i>March 11, 2014, by 5:00 pm EST</i></b>
<b><i>Answers Provided:</i></b>	<b><i>On or about March 14, 2014</i></b>
<b><i>Proposals Due:</i></b>	<b><i>March 19, 2014, by 3:00 pm EST</i></b>

**Contract Period**

Term of deed restriction relating to the provision of health care services with respect to any parcel of Property, being not less than 20 years.

**Location of Transaction**

Location of the Property and services to be provided is Brooklyn, New York.

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**Designated Contact(s)**

***Primary:***  
Jordan Lohre  
Senior Contract Manager  
State University of New York  
jordan.lohre@suny.edu  
518-320-1341

***Secondary:***  
Kathleen Rowe  
Administrative Assistant  
State University of New York  
kathleen.rowe@suny.edu  
518-320-1341

*Please make all inquiries by email.*

## PART 1. GENERAL INFORMATION AND INSTRUCTIONS

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**OFFERORS MUST BE EXTREMELY CAREFUL AND DILIGENT TO STRICTLY FOLLOW ALL INSTRUCTIONS IN THIS REQUEST FOR PROPOSAL. FAILURE TO DO SO WILL RESULT IN DISQUALIFICATION OF THE PROPOSAL. IF THERE ARE ANY QUESTIONS REGARDING THE INSTRUCTIONS, OFFERORS ARE STRONGLY ENCOURAGED TO CONTACT THE SUNY DESIGNATED CONTACTS IDENTIFIED ABOVE FOR CLARIFICATION.**

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### A. Electronic RFP

Electronic copies of this RFP and related forms are available at <http://www.suny.edu/hospitals/downstate/newrfp/>.

### B. Proposal Submission Guidelines

1. An Offeror's proposal shall address the Offeror's ability and methodology for providing the health care services and for purchasing the Property. To be deemed "responsive" to this RFP, an Offeror must meet all mandatory requirements and qualifications and its written proposal must address all points and questions appearing in this RFP. In the event an Offeror's proposal is determined by SUNY to be "non-responsive," SUNY is required by procedure to disqualify such proposal, the proposal will not be further evaluated, and the Offeror submitting that proposal will not be considered for award. To facilitate SUNY's review of proposals, an Offeror shall address all points and questions that appear in this RFP, and should do so in the order that they appear. Proposals should be labeled to coincide with the numbers and letters of the sections and subsections as they appear in this RFP.
2. When submitting a proposal, the Offeror must prepare a clearly readable proposal that includes:
  - a) a cover letter:
    - (1) indicating that the instructions of this RFP are understood,
    - (2) stating the non-contingent purchase price for the Property:**
      - (a) with non-contingent purchase price meaning for purposes of this requirement the proposed purchase price for the Property (or identified part thereof) of which not less than 10% will be paid and be non-refundable upon execution of the resulting agreement and the balance will be paid in immediately available funds upon closing the transaction without any contingency for due diligence, re-zoning, regulatory approval of health care licenses or certificates or any other condition,
      - (b) Note that for purposes of determining whether the proposed purchase price satisfies the Minimum Price requirement set forth in PART 2.A.3.b) below of this RFP, any requirement in a proposal that requires SUNY or its affiliates to: make any payments as part of the proposed transaction; issue or provide any credits to the

Offeror as part of the proposed transaction (except for a credit based on a liability assumed by the Offeror for the benefit of SUNY); or deduct any amount from the amount otherwise payable by the Offeror in connection with the proposal shall have the amount of such payments, credits or deductions subtracted from the non-contingent sales proceeds otherwise to be paid by or on behalf of the Offeror to SUNY or its affiliates for purposes of determining whether such Minimum Purchase Price has been met.]

- (3) identifying the section(s) and page(s) in the proposal that specify the medical services anticipated in Offeror's medical-services plan, including:
  - (a) for proposed in-patient services, the expected number of beds;
  - (b) the medical specialties (e.g., obstetrics, oncology) to be included in the medical-services plan; and
  - (c) how the medical-services plan will meet the needs of the community, and
- (4) identifying the representative(s) of Offeror who attended the mandatory site visit and who attended the mandatory community healthcare presentation, including the dates attended, and

b) all required information.

Additional requirements for the submission of proposals can be found throughout this RFP, including Part 2. All such requirements, if any, must be met.

3. When submitting a proposal, Offerors must indicate any deviations from the specifications and if necessary attach separate documents and/or explanation.
4. Proposals should be submitted in sealed packages and explicitly labeled on the exterior with the RFP number and description. Proposals not labeled as instructed risk being opened prior to the proposal opening date, which may result in the proposal being rejected.
5. No telephone or facsimile or emailed proposals will be accepted.
6. **Submit twenty-four (24) complete hard copies of your proposal, one of which, marked ORIGINAL, must have original signatures on the cover letter and all required forms and certifications, to the address provided below.** Proposals must be received in the office identified below by the due date and time provided on Page 2, above. No proposal will be considered that is not physically received in the Office of Business Operations and Procurement by the due date and time. Electronically transmitted proposals will **NOT** be accepted. Offerors mailing their proposals must allow sufficient time to ensure receipt by the due date and time. Offerors are cautioned that even when using a track-able mailing, courier or messenger service, proposals must be received by the due date and time. While proposals may be signed for by personnel in the office building identified below prior to the due date and time, this does not guarantee that the identified office will receive the proposal by the due date and time. Proposals must be addressed and submitted to:

Jordan Lohre, Senior Contract Manager  
 Office of Business Operations & Procurement, S112  
 State University of New York  
 State University Plaza  
 Albany, New York 12246

7. Each copy of the proposal must be accompanied by the following documents. As noted above, at least one copy of the proposal marked ORIGINAL must include all original signatures on these documents.
  - a) Attachment 1, Submission Identification Form
  - b) Attachment 2, Registration and Confidentiality Agreement
  - c) Attachment 4, Non-Collusion Certification Form – Required for joint proposals only
  - d) Exhibit B, Procurement Lobbying Act Certification
  - e) Exhibit C, Term Sheet
  - f) Form 107, MWBE Utilization Plan
  - g) Form 108, Staffing Plan
  - h) Form 104, Equal Employment Opportunity Policy Statement
  - i) A New York State Vendor Responsibility Questionnaire – Use the form for non-construction and either for-profit or non-profit as the case may be. The forms can be accessed at: [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm). Offerors who participate in the State VendRep system must nonetheless include an original signed copy of their questionnaire with their proposal marked ORIGINAL and paper copies with all other copies of their proposals.
8. An authorized person must fully and properly execute the proposal. By signing, you certify (i) your express authority to sign on behalf of yourself, your company, or other entity; (ii) your full knowledge and acceptance of this RFP, Exhibit A (State University of New York Standard Contract Clauses), Exhibit A-1 (State University of New York Affirmative Action Clauses), Exhibit B (Procurement Lobbying Certification relating to State Finance Law §139-j and §139-k), and Exhibit D (Conditions, Terms and Limitations); and (iii) that all information provided is complete, true and accurate. By signing you further affirm that you understand and agree to comply with the procedures on permissible contacts relating to this procurement as required by State Finance Law §139-j(3) and §139-j(6)(b). These procedures may be accessed at: Procurement Lobbying: <http://www.oqs.state.ny.us/aboutOqs/regulations/defaultAdvisoryCouncil.html>.
9. Offerors must submit all information requested by SUNY in written form. Proposals must be complete, accurate, and in the form requested. Omissions, inaccuracies or misstatements will be sufficient cause for the rejection of a proposal.
10. All prices and conditions must be included in the original proposal. Prices and conditions not included in the original proposal will be rejected.
11. In their proposals, Offerors must identify the name(s) and address(es) of all parties who will be involved in meeting the objectives of this RFP and describe the roles that such parties are to perform. Offerors must also provide information that such parties have the necessary skill, experience and financial resources to perform such roles. Offerors must provide letters of intent or commitment letters from each such party evidencing their commitment to perform such roles. For purposes of this requirement, these parties include without limitation the entity submitting the proposal and each party who will be involved in meeting the objectives of this RFP, including any partner, subcontractor and collaborator, source of financing, health care provider, including tenants, and real estate developer.

12. The submission of a proposal constitutes a irrevocable, binding offer to provide the health care services and purchase the Property. Such binding offer shall be firm and irrevocable for a period of sixty (60) days from proposal opening. Offerors should include with their proposals evidence of financing and equity, in the form of executed financial commitments and statements of the availability of dedicated funds, certified by the appropriate officer of Offeror, in an aggregate amount that is sufficient to satisfy the non-contingent purchase price. Subsequent to such sixty (60) days, the proposal is subject to withdrawal upon prior written notice to SUNY from the Offeror.
13. Offeror is responsible for all costs, direct or indirect, that it incurs related to the preparation and submission of a proposal in response to this RFP.
14. All Offeror questions and requests for clarification must be made in writing (electronic mail submission is preferred) and must be received by SUNY's Designated Contact no later than March 11, 2014, 5:00 pm EST. Any questions or requests submitted subsequent to this deadline may not receive a response from SUNY.

### **C. Offeror Registration and Confidentiality**

This RFP makes reference to a variety of additional information. To receive this additional information, Offerors are required to register with SUNY's Office of Business Operations & Procurement. To register, please complete the Registration and Confidentiality Agreement attached to this RFP as Attachment 2, and email it to [jordan.lohre@suny.edu](mailto:jordan.lohre@suny.edu), with a copy to [kathleen.rowe@suny.edu](mailto:kathleen.rowe@suny.edu). Upon receipt of the signed Agreement, a link providing access to the additional information will be sent to the registered Offeror. Registration for any prior request for proposal does not satisfy this requirement.

### **D. No Claims or Rights**

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

### **E. Proposal Confidentiality**

By submitting a proposal, the Offeror agrees that its proposal will be made public by posting on SUNY's website prior to award excepting only terms expressly identified by the Offeror as not to be made public. Offeror shall submit with its proposal a separate letter addressed to the Designated Contact identified on page 2 of this RFP, specifically identifying the page number(s), line(s) or other appropriate designation(s) of the proposal that should not be posted on such website. This letter is in addition to the FOIL letter described in the next paragraph.

All proposals submitted for SUNY's consideration will be held in confidence except as provided in the foregoing paragraph and will become the property of SUNY. However, the resulting agreement (the "Agreement") among SUNY, Downstate at LICH Holding Company, Inc. and the Offeror who is given the award (the "Successful Offeror") is subject to the New York State Freedom of Information Law (FOIL), contained in Article 6 of the New York State Public Officer's Law. Therefore, if an Offeror believes that any information in its proposal constitutes a trade secret, should be treated as confidential and should not be disclosed upon request pursuant to FOIL, the Offeror shall submit with its proposal a separate letter addressed to: *Casey Vattimo, Records Access Officer, State University of New York, State University Plaza, Albany, New York 12246*, specifically (i) identifying the page number(s), line(s) or other appropriate designation(s) containing such information; (ii) explaining in detail why such information is a trade secret or confidential; and (iii) formally requesting that such information be held as confidential. Failure by

an Offeror to submit such a letter with its proposal will constitute a waiver by the Offeror of any rights it may have under Section 89 of the Public Officers' Law relating to exemption from disclosure of trade secrets or other information. The information designated confidential by the Offeror may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire proposal be kept confidential is not advisable, because a proposal cannot reasonably consist of all data subject to FOIL proprietary status.

#### **F. Procurement Lobbying Act – State Finance Law §§ 139-j and 139-k**

Prior to approval by SUNY, or if applicable, the Office of the State Comptroller (“OSC”), of the Agreement, an Offeror shall not communicate with SUNY other than with the persons identified in this RFP as Designated Contacts or with a person who the Designated Contacts has advised the Offeror in writing is also a Designated Contact.

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

SUNY will make a record of all Contacts, and such records of Contact will become part of the solicitation record for this RFP. A determination that an Offeror or a person acting on behalf of an Offeror has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award under this RFP. Additional sanctions may apply.

A complete copy of SUNY’s Procurement Lobbying Policy and Procedure is available for review at [http://www.suny.edu/sunyp/documents.cfm?doc\\_id=430](http://www.suny.edu/sunyp/documents.cfm?doc_id=430)

Each Offeror shall submit with its proposal a written affirmation of its understanding of SUNY’s procurement lobbying procedures and agreement to comply with such procedures on the attached Exhibit B.

#### **G. Affirmative Action Policy**

New York State Executive Order No. 6, regarding equal employment opportunities states:

It is the policy of the State of New York that equal opportunity be assured in the State's personnel system and affirmative action provided in its administration in accordance with the requirement of the State's Human Rights Law and the mandate of Title VII of the Federal Civil Rights Act, as amended. Accordingly, it is the responsibility of the State's Department of Civil Service to enforce the State's policy of ensuring full and equal opportunity for minorities, women, disabled persons and Vietnam era veterans at all occupational levels of state government.

In keeping with this policy, SUNY mandates internal compliance and compliance by all organizations with which it conducts business. A determination of contract award will include a



review of evidence supplied by Offeror on Offeror's compliance with the State's Affirmative Action policy. **Accordingly, an Offeror's Proposal must include its organization's equal employment opportunity policy statement**, and Offeror must agree that all presentations and materials will be free from bias as to any individual's race, color, national origin, religion, creed, age, disability, sex, gender identity, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

#### **H. Minority and Women-owned Business Enterprises (MWBE)**

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

Requirements and Procedures for MWBE Participation are described in Exhibit A-1 attached to this RFP. Offerors must submit with their proposals forms **MWBE Forms 104, 107 and 108. These forms can be found at [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=611](http://www.suny.edu/sunypp/documents.cfm?doc_id=611).**

Offerors are required to submit an MWBE Utilization Plan (utilizing SUNY MWBE form 107) with their proposal.

1. Equal Employment Opportunity Requirements - By submission of a Proposal in response to this solicitation, the Offeror agrees with all of the terms and conditions of SUNY Exhibit A including Clause 12 - Equal Employment Opportunities for Minorities and Women. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.
2. Offerors are required to submit an EEO staffing plan (utilizing SUNY MWBE form 108) to identify the anticipated work force to be utilized on the Contract with their proposal. If the Offeror is awarded a Contract, Offeror will, upon request, submit to SUNY, a workforce utilization report identifying the workforce actually utilized on the Contract if known.
3. Offerors are required to submit with their proposal their firm's Equal Employment Opportunity Policy Statement (which conforms to the provisions of Exhibit A-1), utilizing SUNY MWBE form 104.

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.

#### **I. Iran Divestment Act**

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

During the term of the Contract, should SUNY receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, SUNY will review such information and offer the person an opportunity to respond. If the person fails to

demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then SUNY shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Offeror in default.

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

#### **J. Requirements of New York State's Recycling Program**

In accordance with the provisions of Section 165(3) of the State Finance Law and Executive Order No. 142, SUNY is required to purchase recycled products, if available, made with recycled content in accordance with rules and regulations established by the State Department of Environmental Conservation in development of that agency's Recycling Emblems Program. If the cost of a recycled product does not exceed the cost of a product made without recycled content by 10% (or by 15% if over 50% of the recycled materials are generated from the New York State waste stream), the recycled product must be purchased.

#### **K. Omnibus Procurement Act of 1992:**

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as proposers, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers and a directory of minority and women-owned business enterprises is available from:

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

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

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

#### **M. Determination of Vendor Responsibility**

New York State procurement law requires that state agencies make awards only to responsible Offerors. Additionally, the Comptroller must be satisfied that a proposed Offeror is responsible before approving an award under Section 112 of the State Finance Law. Section 163 of the

State Finance Law (SFL) requires that contracts for services and commodities be awarded on the basis of lowest price or best value<sup>1</sup> “to a responsive and responsible Offeror.” Section 163(9)f of the SFL requires that prior to making an award, each contracting agency shall make a determination of responsibility of the proposed Offeror.

In accordance with these procurement laws, SUNY will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business. In doing so, regardless of whether these provisions of the SFL apply to this RFP and the resulting agreement, **Offerors, including any subcontractors, partners and collaborators of Offeror who will be involved in effectuating the Proposal, are required to provide a copy of their Vendor Responsibility Questionnaire with their proposals** and to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Offerors opting to file a paper questionnaire may obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact SUNY System Administration for a copy of the paper form.

#### **N. State Consultant Services Reporting**

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

#### **O. Post Award Procedures**

Offerors wishing to participate in a debriefing may make a request in writing within five (5) business days of SUNY’s notification of the award. The written request shall be submitted to the email address specified for Questions in this RFP. SUNY will endeavor to schedule a debriefing within 10 business days of its receipt of the request. Offerors’ written request must state whether Offeror will be attending with counsel, to allow SUNY to arrange for SUNY counsel attendance if so determined. Offerors wishing to file a protest may do so in accordance with SUNY’s procedures, available at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=699](http://www.suny.edu/sunypp/documents.cfm?doc_id=699).

#### **P. Electronic Payment Authorization**

The contractor shall provide complete and accurate billing invoices to SUNY in order to receive payment for its services. Billing invoices submitted to SUNY must contain all information and

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<sup>1</sup> With respect to this Request for Proposal, the “lowest price” refers to the lowest discount or reduction from the appraised value of the Property to the proposed purchase price of the Property. It does not refer to the lowest proposed purchase price. Further, “best value” is determined through the technical evaluation.

supporting documentation required by SUNY and OSC. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice Chancellor for Business and Finance of the State University of New York or designee, in her/his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York state procedures and practices. The contractor shall comply with the OSC procedures to authorize payments. Authorization forms are available at the OSC website at [www.osc.state.ny.us/epay](http://www.osc.state.ny.us/epay), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-474-4032. The contractor acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the OSC's electronic payment procedures, except where the Vice Chancellor or designee has expressly authorized payment by paper check as set forth above.

*NOTE: This section P, above, may not be applicable to this Request for Proposal.*

**Q. Additional Terms and/or Conditions**

1. Receipt of this RFP does not indicate that SUNY has predetermined Offeror's qualifications to receive an Award. An Award, if made, shall be based on evaluation of the proposal in accordance with the criteria set forth in this RFP. The Successful Offeror will be notified by SUNY by telephone and confirmed by letter.
2. Offeror Terms: Offeror's standard terms and conditions will not be considered relevant to its proposal, the Award or the Agreement, and should not be included with its proposal. Any additional Offeror terms and conditions that are attached or referenced with Offeror's proposal shall not be considered part of the proposal, but shall be deemed included for informational purposes only. No extraneous terms will be incorporated into an agreement unless approved in writing by the SUNY Office of General Counsel. Acceptance and/or processing of the proposal shall not constitute acceptance of the extraneous terms.
3. The following items will be incorporated into, and made part of, the formal agreement: (1) this RFP; (2) the Successful Offeror's Proposal; (3) Exhibit A, Standard Contract Clauses; (4) Exhibit A-1, Affirmative Action Clauses; (5) Exhibit B, Procurement Lobbying Form; (6) Exhibit C, Term Sheet; and (7) Exhibit D, Conditions, Terms and Limitations.
4. In the event of any inconsistency in or conflict among the document elements of the agreement described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Exhibits A and A-1; (2) Exhibit B, (3) Exhibit D, (4) the Agreement; (5) this RFP; and (6) the Successful Offeror's Proposal, including Exhibit C.
5. Any terms that are attached or referenced with a submission shall not be considered part of the proposal or resulting agreement, if any, but shall be deemed included for informational purposes only.
6. The resulting agreement shall be binding upon its execution by both parties and, if required by New York State law, upon the approval of the Attorney General and the Office of the State Comptroller.
7. The agreement may be revised at any time upon mutual consent of the parties in writing. Such written consent will not be effective until signed by both parties and, if required by New York State law, approved by the Attorney General and the Office of the State Comptroller.

8. The relationship of the Successful Offeror, including its agents and employees and any entity or person acting on behalf of the Successful Offeror in the performance of the resulting agreement, to SUNY and to Holding Company shall be that of independent third party. By submitting a proposal, Offeror covenants and agrees to act in accordance with this status. The Successful Offeror shall neither hold itself out as, nor claim to be, an agent, officer, or employee of SUNY and without limitation shall make no claim for, nor be entitled to Workers' Compensation coverage, medical or unemployment benefits, social security, or retirement membership benefits from SUNY.
9. Compliance with the post-employment restrictions of the Ethics in Government Act is required.
10. The Successful Offeror will remain responsible for compliance with all specifications and performance of all obligations under the Agreement resulting from this RFP.
11. Neither SUNY nor Holding Company will be liable for any costs associated with the preparation, transmittal, or presentation of any Proposals or materials submitted in response to this RFP.
12. The Laws of the State of New York shall govern this RFP and the resulting Agreement.
13. **Public announcements or news releases regarding this RFP, its proposal or any subsequent award or an agreement must not be made by any Offeror without the prior written approval of SUNY.**
14. The Successful Offeror(s) is responsible for compliance with all laws, rules, orders, regulations and requirements of federal, state and municipal governments applicable hereto, including the provisions of Exhibit A, State University of New York Standard Contract Clauses, and Exhibit A-1, State University of New York Affirmative Action Clauses. The Successful Offeror shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.
15. Indemnification - The Successful Offeror shall fully indemnify, defend and save harmless SUNY, Downstate at LICH Holding Company, Inc. and New York State, their respective officers, agents and employees and members of the evaluation committees described below, without limitation from suits, actions, damages and costs of every name and description arising out of (a) the Agreement, and (b) the acts, omissions, liabilities, or obligations of the Successful Offeror, any affiliate, or any person or entity engaged by the Successful Offeror as an expert, consultant, independent contractor, subcontractor, employee or agent in any performance under the Agreement, including (i) personal injury, damage to real or personal tangible property; (ii) negligence, either active or passive; and (iii) infringement of any law or of a United States Letter Patent, with respect to the proposal and any health care services provided thereunder, and of any copyright, trademark, trade secret or intellectual proprietary rights. \* Note SUNY cannot indemnify a vendor for service or product however, In accordance with the provisions of the Court of Claims Act, and the decisions issued thereunder, the State University of New York and, to the fullest extent thereby, shall be responsible for any liability, claim, loss, damage, suit or judgment (and if assessed by a court of competent jurisdiction, any costs, expenses, and reasonable counsel fees) arising directly from the negligent acts or omissions of the State University of New York or its officers and employees while they are acting within the scope of their employment.
16. Liability - The Successful Offeror will be responsible for the work, direction and compensation of its employees, consultants, agents and contractors. Nothing in the

resulting agreement or the performance thereof by the Successful Offeror will impose any liability or duty whatsoever on SUNY or Holding Company including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.

17. Liability Insurance – Prior to the commencement of work, the Successful Offeror will provide, at its sole cost and expense, Certificates of Insurance which shall remain in force throughout the term of the agreement, or any extension thereof, from an insurance company licensed by the New York State Department of Insurance with a rating of at least "A-" as published with Standard & Poor's as follows: (i) a general liability insurance policy with limits no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate and, where any part of the contracted activity involves the services of a professional consultant, (ii) a professional liability policy in the amount of One Million Dollars (\$1,000,000), which shall be maintained for a period of three (3) years after completion of this agreement and if issued on a claims-made policy form, said professional liability policy shall be purchased with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed. If during the term of the aforesaid policies, the carrier's rating falls below "A-", the liability insurance coverage must be replaced no later than the renewal date of the policy with an insurer acceptable to the State of New York. Such policies shall name the STATE UNIVERSITY OF NEW YORK and Downstate at LICH Holding Company, Inc. as additional insureds. Such policy shall designate the State University of New York and Downstate at LICH Holding Company, Inc. as the loss payee and shall contain a provision that the State University of New York and Downstate at LICH Holding Company, Inc. shall receive at least thirty (30) day's notice prior to material change, cancellation or expiration of any such policy. The certificates of such insurance should be delivered with the signed agreement.

*NOTE: This section 17, above, may not be applicable to this Request for Proposal.*

18. Workers Compensation Insurance & Disability Benefits Coverage - All employees in the hire of the Successful Offeror shall be adequately and properly covered by Workers' Compensation Insurance and Disability Benefits coverage in all work concerned in and about the Demised Premises. Such policies shall name the STATE UNIVERSITY OF NEW YORK and Downstate at LICH Holding Company, Inc. as additional insureds and are to be written by recognized and well-rated insurance companies authorized to transact business in the State of New York. The Successful Offeror shall deliver certificates of such coverage, or proof that such coverage is not required, in the required format, as required by the Workers' Compensation Board when the agreement is signed by the parties and thereafter not less than thirty (30) days prior to material change of cancellation of such coverage.

*NOTE: This section 18, above, may not be applicable to this Request for Proposal.*

19. Certificates of Coverage for both liability insurance and workers compensation insurance and disability benefits coverage are to be provided, in accordance with and as outlined above in sections 18 and 19, to the *Office of Business Operations & Procurement, State University of New York, State University Plaza, Albany, New York 12246, attention Kathleen Rowe.*

*NOTE: This section 19, above, may not be applicable to this Request for Proposal.*

20. In no event will any Successful Offeror be reimbursed for travel by SUNY or Holding Company.

**R. SUNY reserves the right to:**

1. Reject any and all proposals received in response to this RFP.
2. Reject any or all portions of any proposal, to negotiate terms and conditions consistent with this RFP, and to make an award for any or all remaining portions.
3. To terminate any resulting Agreement for: (1) unavailability of funds; (2) cause; (3) convenience; (4) in the event the certifications filed by the Offeror in accordance with State Finance Law §§139-j and 139-k are found to be intentionally false or intentionally incomplete. Upon such finding, SUNY may exercise its termination right by providing written notification in accordance with the written notification terms of the Agreement.
4. Withdraw the RFP at any time, at SUNY's sole discretion.
5. Make an award in whole or in part.
6. Disqualify any Offeror whose conduct and/or proposal fails to conform to the requirements of the RFP.
7. Use proposal information obtained through site visits, management interviews and the state's investigation of an offeror's qualifications, experience, ability, or financial standing, and any material or information submitted by Offeror in response to SUNY's request for clarifying information in the course of evaluation and/or award under the RFP.
8. Prior to the proposal opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
9. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
10. Request references and to contact any or all references.
11. Waive requirements or amend this RFP upon notification to all Offerors. Mandatory requirements may be eliminated if unmet by all Offerors.
12. Adjust or correct cost or cost figures with the concurrence of the Offeror if mathematical or typographical errors exist.
13. Negotiate with Offerors responding to this RFP within the requirements necessary to serve the best interests of SUNY consistent with the objectives of this RFP.
14. Begin contract negotiations with another Offeror in order to serve the best interests of SUNY, should SUNY or Holding Company be unsuccessful in negotiating an Agreement with the Successful Offeror within an acceptable time frame.
15. Request clarifications from Offerors for purposes of assuring a full understanding of responsiveness, and further to permit revisions from all Offerors determined to be susceptible to being selected for award, prior to award.
16. Advise Offeror of an objectionable employee(s) and/or subcontractor(s).
17. Terminate the resulting Agreement with thirty (30) days written notice prior to closing.
18. Waive minor irregularities.
19. Make no Award.

**Important**  
**GROUNDS FOR DISQUALIFICATION**

The terms, conditions and all applicable information required for submitting a Proposal are outlined throughout this RFP. Offerors must pay strict attention to the Proposal submission date, time and location to prevent disqualification. To insure compliance with the RFP requirements and prevent possible disqualification, Offerors must follow the format and instructions as required herein. Failure of Offeror to follow instructions may result in disqualification of the Proposal.



## **PART 2. PROJECT SPECIFICATIONS**

### **A. Project Descriptions and Objectives**

The State University of New York (“SUNY”) on behalf of its State University of New York Health Science Center at Brooklyn (“Downstate”) intends to exit from the operation of the health care facilities located at University Hospital of Brooklyn at Long Island College Hospital (LICH), including the operation of the acute care hospital facility and associated outpatient and ambulatory facilities and offices at that location. Therefore, SUNY is requesting proposals from qualified parties who could provide or arrange to provide, ideally, an acute care hospital (preferably a teaching hospital), and/or other health care services at the LICH campus, consistent with the medical services described in this Part 2, and consistent with the health care needs of the community as described during the mandatory Offerors Meeting described in section O, below, and to purchase the LICH core property, plant, equipment and non-core property (the “Property”). For all purposes, “SUNY” includes the State University of New York, its Board of Trustees, its State University of New York Health Science Center at Brooklyn and the University Hospital of Brooklyn.

Substantially all of the real property, furniture and equipment is owned by Downstate at LICH Holding Company, Inc. (“Holding Company”). Holding Company is a New York nonprofit corporation, the sole member of which is SUNY. Some of the Property is subject to third party leases. See Attachment 3.

SUNY through Holding Company will manage all aspects of this solicitation process and will coordinate disposition of the Property to the Successful Offeror.

The key objectives of this transaction include the following:

1. Proposals that offer a realistic method to continue health care operations after SUNY exits from continuing health care operations which may occur as soon as May 7, 2014, and thereby avoiding any gap in the provision of health care services at the LICH campus at no additional cost to SUNY are preferred. While offering more comprehensive health care services is preferred as the long-term plan (as described below), proposals that provide for maintenance of some health care operations during the interim period between SUNY’s withdrawal and implementation of the ultimate plan will be eligible for a higher technical score. The Dormitory Authority of the State of New York may determine that such transition method would require defeasance of Personal Income Tax bonds (estimated defeasance amount of \$118,000,000). If so, such transition proposal must provide for the defeasance of said bonds.
2. Operation of a health care facility on all or part of the LICH campus, with the following preferences:
  - a) Offerors are strongly encouraged to include a facility with services/departments sufficient to support a full-service emergency room, an intensive care unit, and in-patient beds. Any proposal lacking these medical services will be subject to receiving a lower technical score.
  - b) A desired element is a full-service hospital with at least 100 in-patient beds. Any proposal including these medical services will be eligible for a higher technical score.
  - c) Proposals that include a teaching hospital or an affiliation with a teaching hospital will be eligible for a higher technical score.

- d) Proposals that do not include all of the encouraged and desired medical services described above will be considered provided, the proposed health care services are consistent with the healthcare needs of the community as identified in the New York City Regional Economic Development Council Strategic Plan, November 14, 2011.
3. Sale of the Property at no less than the current market values/Minimum Price.
- a) Appraisals indicate that the market values of the Property at their highest and best use are as set forth on Exhibit E.
  - b) No award shall be made to any Offeror whose proposal provides for less than \$210,000,000 in non-contingent sales proceeds (the "Minimum Purchase Price"); such Minimum Purchase Price to be paid at closing.
  - c) Any requirement in a proposal that requires SUNY or its affiliates to: make any payments as part of the proposed transaction; issue or provide any credits to the Offeror as part of the proposed transaction (except for a credit based on a liability assumed by the Offeror for the benefit of SUNY); or deduct any amount from the amount otherwise payable by the Offeror in connection with the proposed transaction shall have the amount of such payments, credits or deductions subtracted from the non-contingent sales proceeds otherwise to be paid by or on behalf of the Offeror to SUNY or its affiliates for purposes of determining whether the Minimum Purchase Price has been met.
  - d) A proposal to purchase less than all the Property will be considered provided it meets all mandatory requirements set forth in this RFP. To determine whether such a proposal satisfies the Minimum Price, the proposed non-contingent purchase price for less than all the Property will be adjusted by adding the average appraised value of the parcels of real estate that are not proposed to be purchased. No adjustment will be made with respect to equipment not proposed to be purchased.

**Note: no seller financing will be available.**

Note: An assumption of liabilities by Offeror may not be valued at 100% of the Offeror's estimate of the amount of such liabilities by SUNY and therefore, may not be added to the amount of the proposed non-contingent purchase price for purposes of determining whether the proposal satisfies the Minimum Price requirement.

Proposals that include elements that address objectives other than those set forth above will not be entitled to receive higher technical scores and to the extent such elements reduce the proposed non-contingent purchase price, such proposals will receive lower financial scores.

A proposal that includes more than one entity that together meets the above objectives will be considered. The relationship between or among such entities must be clearly described in the proposal. Such proposal must also comply with §139-D of the New York State Finance Law. The appropriate non-collusion certification, attached as Attachment 4, must be signed by the parties and submitted with the Offer. Offerors should include with their proposals evidence of financing and equity, in the form of executed financial commitments and statements of the availability of dedicated funds, certified by the appropriate officer of Offeror, in an aggregate amount that is sufficient to satisfy the non-contingent purchase price and to renovate any of the properties in which health services will be provided, and letters of intent executed by potential tenants of any space(s) in which health services will be provided if by other than the Offeror.

## **B. Background**

The State University of New York Downstate Medical Center is the only academic medical center for health education, research and patient care located in and serving the borough of Brooklyn.

With a population of 2.5 million, Brooklyn is the largest of the five boroughs of New York City. The borough is estimated to be the seventh largest county in the United States, and if it were a city, it is estimated it would rank as the fourth largest city.

Located on an urban campus in central Brooklyn, SUNY Downstate Medical Center includes a College of Medicine, College of Health Related Professions, College of Nursing, School of Graduate Studies, School of Public Health and the University Hospital of Brooklyn. The University Hospital of Brooklyn (“UHB”) includes two full-service, comprehensive hospital sites (UHB at central Brooklyn and UHB at Long Island College Hospital or “LICH”), plus a free-standing Urgent Care and Ambulatory Surgery Center at Bay Ridge and nine ambulatory satellite sites. Over 1,700 students pursue certificates, Bachelor of Science, Master of Science, Doctor of Public Health, Ph.D. and M.D. degrees.

The operation addressed here constitutes LICH, initially established in 1858, a 506-bed, teaching hospital located in the Cobble Hill neighborhood of Brooklyn. Approximately 275 beds have been operational since 2011.

SUNY and Holding Company acquired the LICH healthcare services operation and real estate from Continuum Health Partners (“CHP”) in May 2011. Reference is made to the financial information described in Section H. Financial and Statistical Information, below.

## **C. Sustainability Plan**

On March 28, 2013, the Legislature enacted Chapter 56 Part Q of the Laws of 2013-14 (“Part Q”) as part of the Budget Bill for Health and Mental Hygiene, which required SUNY to submit to the Executive and Legislature a plan to secure the ongoing fiscal viability of the Downstate Hospital enterprise. This sustainability plan was subject to the approval of the DOH Commissioner of Health and the Director of the Division of the Budget. SUNY submitted its sustainability plan on May 31, 2013, and a supplement to it on June 13, 2013 (together, the “Sustainability Plan”). The Director of the Budget and the Commissioner of Health approved the Sustainability Plan by letter issued June 13, 2013, which provides as follows: “State restructuring assistance will be made available pursuant to a Disbursement Agreement between [UHB] and the Department of Health, which will delineate benchmarks associated with the implementation of specific initiatives necessary to achieve the financial milestones assumed in the supplemented Sustainability Plan . . . .” Pursuant to Part Q, the Sustainability Plan was thereby deemed final, and SUNY was required to start implementing the approved plan by June 15, 2013, which it has been doing.

As pertains to LICH, Part Q required that the Sustainability Plan “set forth recommendations for accomplishing the restructuring of Downstate Hospital for the purpose of achieving fiscal viability while preserving its status as a teaching hospital” and “include the elimination and/or reduction of acute, ambulatory and support services that are not necessary or financially sustainable and any additional measures necessary to achieve such restructuring and achieve financial sustainability.” Accordingly, the approved Sustainability Plan provides as follows: “Downstate has determined that it must exit from the operation of the LICH facility as soon as possible.”

To the extent that it may be required by law, Part Q is considered to authorize the sale of LICH’s real estate comprising this transaction.

#### **D. LICH Campus Overview**

The LICH hospital facility is certified for inpatient capacity of 506 beds including adult, neonatal, and pediatric intensive care, maternity, and psychiatry. The LICH hospital facility has provided services to the northwestern section of Brooklyn including Downtown Brooklyn, Brooklyn Heights, Red Hook, Bedford Stuyvesant, Williamsburg, and Crown Heights. This area includes approximately 460,000 residents. In addition to the ambulatory care and emergency services at the primary LICH campus, four school-based clinics are operated in the nearby area. The outpatient services have included primary and specialty care and behavioral health services. In 2012, approximately 14,000 inpatients were discharged from the LICH hospital facility, the majority of whom were publicly insured (approximately 77%) through Medicare or Medicaid. The LICH hospital facility is also licensed for EMS ambulance services and currently has nine ambulances on site.

#### **E. Services on LICH Operating Certificate**

The operating certificate for LICH has included the services listed below. The operating certificate will not be transferable to the Successful Offeror. The costs of obtaining operating certificate(s) for the proposed health care services are those of the Offeror. The Offeror will be obligated only to obtain such certificates as are required for the proposed health care services. SUNY is not responsible for Offeror's success in obtaining such certificates.

Inpatient Services:

- Coronary care
- Intensive Care
- Maternity
- Medical/Surgical
- Neonatal Continuing Care
- Neonatal Intensive Care
- Neonatal Intermediate Care
- Pediatrics
- Pediatric ICU
- Physical Medicine and Rehabilitation
- Licensed OMH Adult Inpatient Psychiatry

Outpatient Services:

- Emergency Department
- Rehabilitation Therapy
- OMH Licensed Article 31 Mental Health Clinic Services
- Ambulatory Surgery
- Primary and Specialty Care
- Prenatal and Family Planning
- Ambulance Services

#### **F. Community Healthcare Needs**

The communities served by LICH, certain members of the medical staff at LICH, the nursing staff at LICH, certain clerical and other administrative staff at LICH, and certain elected officials, including the Public Advocate for the City of New York (the "Public Advocate"), have strongly stated the need for an acute care community hospital at LICH site. A teaching hospital or affiliation with a teaching hospital is preferred. Proposals that provide a continuation of some

health care services without a gap after SUNY exits operations at the LICH campus, at no additional cost to SUNY, are preferred. This RFP has been issued expressly to invite proposals to meet these stated needs.

Others have described the healthcare needs of the community. For example, Offerors should refer to the Strategic Plan of November 14, 2011 issued by the New York City Regional Economic Development Council.

### **G. Description of LICH Property**

Attachment 3 is a list of the various parcels of real estate included in the Property. All measurements indicated are approximate.

#### **1. Neighborhood description**

UHB at LICH is located in the Cobble Hill section of the Borough of Brooklyn. Cobble Hill consists of about 40 square blocks with a diverse resident population. Cobble Hill includes beautiful brownstones, a half-acre park, and historic buildings that make this neighborhood a very desirable destination to live and visit.

#### **2. Core Properties**

The core LICH hospital operation is comprised of the Fuller Pavilion, Othmer Pavilion, Polak Pavilion and Henry Street building.

The *Fuller Pavilion* is a 12-story plus basement structure that contains 232,308 square feet and was constructed in 1970.

The *Othmer Pavilion* is connected to the Fuller Pavilion and is an 8-story structure plus basement and sub-basement. The Othmer Pavilion contains 108,635 square feet and was built in 1990. The Fuller and Othmer Pavilions are situated on approximately 61,733 square feet, or 1.42 acres of land. A walkway over Pacific Street connects the Fuller and Othmer Pavilions to the Polak Pavilion and Henry Street Building.

The *Polak Pavilion* is a six-story plus basement structure that contains 149,516 square feet and was constructed in 1983.

The *Henry Street Building* (also referred to as the *Amity Pavilion*) is connected to the Polak Pavilion. The Henry Street Building is a six-story plus basement structure that contains 145,500 square feet and was built in 1905 with major renovations and several additions since it was constructed. The Polak Pavilion and Henry Street Building are situated on approximately 87,800 square feet or 2.02 acres, of land.

#### **3. Non-Core Properties**

The *Polhemus Building* is connected to the Henry Street Building via a walkway. This eight-story plus basement building contains 51,600 square feet and was built in 1850. The Polhemus Building is used mostly for hospital administration and physician offices and contains a fair amount of vacant and unusable space (i.e. the two amphitheatres). The Polhemus Building is situated on approximately 6,834 square feet.

The *349 Henry Street Building* is a five-story plus basement structure that contains 48,015 square feet and was built in 1948. The building is used for clinic and ambulatory care space. It is situated on approximately 11,533 square feet of land.

The parking garage is located at *350-352 Hicks Street*, built in 1997. It is a seven-story structure that contains 175,000 square feet and 433 parking spaces. The parking garage is situated on approximately 20,825 square feet of land.

Other properties include the engineer building located at *385 Hicks Street*, condominium units located at *124-134 Atlantic Avenue*, a dialysis center located at *184 Sterling Place*, and walk-up residential buildings located along Amity Street, Congress Street, Columbia Place and Flatbush Avenue.

Some of the properties are subject to third party leases, landmark status and zoning restrictions. Information relating to same, to the extent available, will be made available to registered Offerors. OFFERORS WILL BE EXPECTED TO DETERMINE WHETHER THEIR PROPOSALS ARE CONSISTENT WITH ANY ZONING OR OTHER APPLICABLE RESTRICTIONS ON USE OF THE PROPERTY REGARDLESS OF ANY DISCLOSURE BY SUNY.

#### **H. Financial and Statistical Data**

As noted above in section 3, the LICH hospital facility is certified for an inpatient bed capacity of 506. In order to provide an overview of the operation of LICH, SUNY will make available financial information to registered Offerors. To register, complete, sign and email the Registration and Confidentiality Agreement (Attachment 2) in accordance with Part 1, Section B, of this RFP. Available financial information includes:

- Audited financial statements for LICH for the periods ending December 31, 2010 and for the period ending May 28, 2011.
- Unaudited Statement of Revenues and Expenses for the periods 2011, 2012 and to the extent available, 2013.
- Statistical information for the periods 2010, 2011, 2012 and to the extent available, 2013.

Offerors are cautioned that during 2013, SUNY was involved in litigation relating to the closure or reduction of or exit from operations at LICH which has had a significant impact on the revenues, expenses and operational statistics.

#### **I. Settlement of Certain Significant Outstanding Litigation**

There have been a number of highly publicized lawsuits brought by 1199 SEIU United Healthcare Workers East (1199), New York State Nurses Association (NYSNA), Concerned Physicians for LICH, LLC (CPL), a number of Community Groups, and the Public Advocate (collectively, the "Litigants") with respect to the proposed closure of LICH and the 2011 sale of the LICH assets to SUNY. In consideration for SUNY's agreement to issue and carry out this RFP with the above-stated objectives, the Litigants and SUNY have settled such lawsuits.

#### **J. Request for Proposal**

The proposal should provide sufficient details for SUNY to evaluate fully its financial and strategic implication. SUNY prefers that the proposal not exceed 50 pages. The following outline **must** be used by Offerors in preparing their proposals. Offerors **should** provide succinct narratives for each of the sections noted below. For purposes of responding to this request, "Offeror" means the entity providing the proposal and each party who will be involved in meeting the objectives of this RFP, including any subcontractors, partners and collaborators.

1. Description of Organization to be involved in Proposal
  - a) Provide a detailed description of the Offeror, including the proposing organization and each subcontractor, partner, tenant, and collaborator who will be involved in effectuating the Proposal, including corporate structure and nature of relationships between such entities.

- b) Provide a disclosure of all Offeror consultants and counsel involved in preparing the Proposal or who will be involved in the consummation of the transaction including whether any such consultant has contingent financial relationships with Offeror.
  - c) Provide an overview of health care services provided by the Offeror, including the organizational structure, facilities operated, service area, clinical service strengths, and any other relevant information. Describe all of the governance models in the system with respect to any owned, sponsored or otherwise affiliated Article 28 hospitals and other facilities.
  - d) Provide a detailed description of the health care services proposed to be provided at or near the LICH campus. Include specific services to be provided and hours of operation and the anticipated locations to the extent practicable. Describe the governance and ownership model for the proposal, especially with respect to any owned, sponsored or otherwise affiliated Article 28 hospitals and other facilities.
  - e) To be considered, the proposal **must** specify the medical services anticipated in Offeror's medical-services plan, including (i) for proposed in-patient services, the expected number of beds; (ii) the medical specialties (e.g., obstetrics, oncology) to be included in the medical-services plan; and (iii) how the medical-services plan will meet the needs of the community.
  - f) Describe any proposed relationships with any other hospitals, systems or healthcare providers, if applicable.
  - g) Provide compliance history for the proposed health care operator and all affiliates, including parent, subsidiaries, and sibling affiliates, if applicable.
  - h) Litigation/Judgments – Provide a detailed description of any pending or threatened litigation in which the Offeror, including the proposing organization or any collaborator is involved and any judgments, orders or integrity or compliance agreements that are applicable to the Offeror, including the proposing organization or any collaborator that may affect the ability to execute the proposed project for the Property successfully.
2. Description of Proposal
- a) Define the overall nature of the proposal and how it relates to each of the objectives as described in PART 2.A, above. Provide detail on each component of the proposal and describe the relationship between components. A business plan is desirable.
  - b) Describe the type of Health Care Entity(ies) proposed.
3. Term Sheet
- a) Complete the Term Sheet attached as Exhibit C. All sections must be completed regardless of the description included in Offeror's Proposal.
  - b) **NOTE THAT THE TERM SHEET MUST PROVIDE THAT FOR ANY PARCEL(S) OF REAL ESTATE USED FOR THE DELIVERY OF THE MEDICAL-SERVICES PLAN BY THE SUCCESSFUL OFFEROR, DEED RESTRICTIONS WILL BE PLACED ON THOSE PARCEL(S) TO ASSURE THE USE OF THE PROPERTY FOR COMMUNITY HEALTH-SERVICES FOR NOT LESS THAN 20 YEARS.**

4. Transaction Structure
  - a) Describe the legal structure of the proposed transaction (i.e., affiliation, joint venture, asset purchase, acquisition, etc.)
  - b) Articulate the reasoning for the structural preference.
  - c) Describe which governmental, regulatory or third party approvals are regarded as necessary or important to a proposed transaction.
  - d) Identify and discuss key factors related to this proposal.
  - e) Identify potential problem areas with any proposed transaction involving the LICH campus.
5. Financial Capacity and Resources
  - a) Provide the financial plan for implementation of such proposal (i.e., capital needs, working capital needs, and source(s) of expected funding).
  - b) Specify the financial sources available to capitalize the proposed transaction and provide details, including proposing organization's financial statements and commitment letters or letters of intent, if applicable.
6. Proposal Timeline
  - a) Provide a timeline showing the necessary approvals, and any regulatory filings and approvals, required for the implementation of the proposal(s).
7. Other Considerations
  - a) Provide information on other factors deemed appropriate for consideration as part of the proposal.

#### **K. Review and Evaluation of Proposals**

This RFP is part of a competitive process that helps serve the best interest of the State University of New York. It also provides Offerors with a fair opportunity for their proposals to be considered.

Proposals to this RFP will be the primary source of information used in the evaluation process. Therefore, Offerors' proposals must be complete.

SUNY will conduct a comprehensive review of the proposals that are submitted in accordance with the terms of this RFP. Qualified proposals will be evaluated by a committee consisting of members designated by SUNY and members designated by the Litigants. The scores determined by members of the Technical Review Subcommittee designated by the Litigants will be weighted as forty-nine percent (49%) of the total technical score. The scores determined by the balance of the Technical Review Subcommittee will be weighted as fifty-one percent (51%) of the total technical score. All members of the Financial Review Subcommittee will be designated by SUNY. Attempts by any Offeror, including the proposing organization and each collaborator, to make contact with a representative or designee of SUNY other than the designated contacts listed above or any of the members of the Technical Review Subcommittee designated by the Litigants, or in any way subvert this RFP process, may result in automatic disqualification of such Offeror.

The financial aspects of the proposal with respect to the Property will be evaluated based on the amount by which the proposed non-contingent purchase price exceeds the Minimum Price and the ability to close the transaction in an expeditious and financially responsible manner.



## L. Selection Criteria

Proposals will be evaluated by an evaluation committee consisting of members designated by SUNY and members designated by the Litigants and utilizing an evaluation methodology that considers multiple factors, including:

Technical: 70 Points

- Commitment to provide health services consistent with the objectives set forth in Part 2, Section A (2) above
- Financial capacity of Offeror to deliver the medical services that it proposes in a sustainable way.
- Non-financial capacity of Offeror to deliver the medical services that it proposes in a sustainable way.
- Prior successful experience with similar transactions
- Approach to the transaction and its understanding of the objectives set forth in Part 2, Section A above
- Ability to commence some health care services at the LICH campus in May 2014 and prior to closing the transactions contemplated by the Agreement thereby avoiding any gap in the provision of health care services
- Technical expertise
- References

Financial: 30 Points

- Amount by which the proposed non-contingent purchase price exceeds the Minimum Price
- Ability to assist Downstate in exiting the provision of clinical services at the LICH campus, in accordance with the approved June 2013 Downstate Sustainability Plan in an expeditious and financially responsible manner, for example, a proposal that includes an assumption of union pension withdrawal liability may assist in the exit.
- Financial capacity of Offeror to close the transaction and pay the proposed non-contingent purchase price in accordance with the terms set forth in the Term Sheet

## M. Evaluation Methodology

Different evaluation subcommittees will review the technical and financial aspects of the proposals. The evaluations will be performed as follows:

Phase 1: Each proposal received by the due date and time will be reviewed to determine if it has met SUNY's minimum mandatory requirements, including all required forms and documents and the Minimum Price. Clarification regarding the information provided may be requested by SUNY if deemed necessary. Proposals that meet the mandatory requirements will be advanced to Phase 2 of the evaluation process. Proposals that do not meet the minimum mandatory requirements of the RFP will not be further considered.

Phase 2: The second phase will be a detailed review of each proposal by the two subcommittees as follows:

- i. The Technical Review Subcommittee will evaluate the proposals utilizing quantified measures of the quality of Offeror's responses to the technical, non-financial requirements of this RFP, including the health care services proposal. The technical

scoring shall be assigned the relative weight in the total evaluation as specified in Section L, Selection Criteria, above.

- ii. The Financial Review Subcommittee will evaluate the proposals utilizing the quantified measures of the Offeror's financial proposal. The financial scoring shall be assigned a relative weight in the total evaluation as specified in Section L, Selection Criteria, above.

**Phase 3:** The qualified Offeror whose proposal meets all mandatory requirements in the this RFP and that receives the highest final composite score (technical plus financial) (the "Initial Successful Offeror") will be awarded the initial opportunity to enter into the transaction with SUNY. If SUNY and the Initial Successful Offeror are unable to enter into an agreement in accordance with the terms in the this RFP within thirty (30) days of such award, then SUNY may, in accordance with its rights enumerated in PART 1.R above, in its sole discretion, terminate such negotiation, and, SUNY may commence negotiations with the qualified Offeror whose proposal meets all mandatory requirements in the this RFP and that receives the next highest final composite score. SUNY reserves the right not to Award.

#### **N. Mandatory Site Visit**

All potential Offerors who did not attend Mandatory Site Visits on August 5 or 6, 2013, relating to State University of New York Request for Proposal X002539 ("RFP X002539"), are required to participate in the site visit scheduled for March 4 and 5, 2014. Offerors who attended Mandatory Site Visits relating to RFP X002539 on or after August 5, 2013 may attend, but will not be disqualified if they fail to attend. During the site visit, potential Offerors will be provided the opportunity to tour the various Property sites. Potential Offerors who participate in the site visit will be registered upon completion and execution of the Registration and Confidentiality Agreement attached to this RFP as Attachment 2, and given access to information relating to the Property regarding occupancy, electrical service and capacity, plumbing, HVAC, fire stopping, fire alarm system, flame spread documentation, elevators, floor plans and other certification and other information to the extent such information is available. Potential Offerors who registered for access to information in connection with RFP X002539 must re-register by completion and execution of the Registration and Confidentiality Agreement attached to this RFP as Attachment 2 and will be given access to all such information.

#### **O. Mandatory Community Healthcare Presentation**

All potential Offerors are required to attend the community healthcare presentation conducted by the Litigants. The presentation session will be held at SUNY College of Optometry, 33 West 42<sup>nd</sup> Street, New York, New York on March 3, 2014 at 5:00 pm EST. The Litigants will discuss their assessment of the community health needs as reflected in the objectives of this RFP.

SUNY intends to record electronically and post on its website all sessions of the community healthcare presentation.

#### **P. Questions**

All questions regarding this RFP, including those arising out of the mandatory site visit, must be submitted in writing, citing the particular RFP page, section and paragraph numbers where applicable. Questions must be emailed to [Kathleen.rowe@suny.edu](mailto:Kathleen.rowe@suny.edu) to arrive no later than 5:00 pm EST on March 11, 2014. Questions received after the closing date for questions may not be answered. Only written answers are official. Answers will be provided on or about March 14, 2014, to all registered Offerors.

## ATTACHMENTS AND EXHIBITS

## Attachment 1 Submission Identification Form

RFP Number:	RFP Title/Issue Date:
<b>Offeror Information</b>	
Legal Business Name of Offeror:	Offeror's Federal Tax Identification Number:
D/B/A – Doing Business As (if applicable)	NYS Vendor ID Number:
Street Address	
City	State
	Zip Code
If applicable, place an "x" in the appropriate box: ( <i>check all that apply</i> )	
1. <input type="checkbox"/> Small Business (if checked, provide # of employees) _____	
2. <input type="checkbox"/> Minority Owned Business <input type="checkbox"/> New York State Certified	
3. <input type="checkbox"/> Women-Owned Business <input type="checkbox"/> New York State Certified	
Total number of people employed by firm?	Total number of people employed by firm in New York State?
<del>Are the prices quoted in your bid the same as, or lower than, that quoted to other corporations, institutions or governmental agencies for similar services and/or like equipment or supplies?</del>	<input type="checkbox"/> YES <input type="checkbox"/> NO If NO, please explain: Not Applicable
<del>Does your firm agree that all presentations and materials will be free from racial, religious or sexual bias?</del>	<input type="checkbox"/> YES <input type="checkbox"/> NO
Please indicate if you or any officer of your organization, or any party owning or controlling more than ten (10) percent of your equity if you are a corporation or other entity with equity, or any member if you are a firm or association, is an officer or employee of the State of New York, or of a Public Benefit Corporation of the State of New York.	List Names and Titles
<del>If you are not submitting a bid, place an "x" in the box and return this page only. <input type="checkbox"/> We are unable to submit a bid at this time because:</del>	<del>Explain: Not Applicable</del>
<b>Offeror Signature:</b>	Printed Name:
Title:	Date:
Phone:	Website:
Extension:	
E-mail address:	
<b>Restricted Period</b>	
In accordance with the requirements of New York State Finance Law Sections 139j and 139k ("Lobbying Law"), the restricted period for this procurement is now in effect. Therefore, all communications regarding this procurement must be handled through the State University of New York's designated contacts only.	

THIS PAGE MUST BE SIGNED IN THE ORIGINAL AND MUST ACCOMPANY AT LEAST ONE COPY OF YOUR PROPOSAL.

Attachment 2  
Registration and Confidentiality Agreement

In consideration of registering as an Offeror for Request for Proposal X002654 of the State University of New York ("RFP") and of receiving access to certain information relating to such RFP, Offeror, and its representatives and agents, shall treat all information obtained from SUNY and/or Downstate at LICH Holding Company, Inc. in connection with this RFP (the "Confidential Information") confidentially, and shall not discuss, publish, divulge, disclose or allow to be disclosed the Confidential Information to any other Offerors or any other person, firm or entity, including press or other media, without SUNY's prior written approval. Offerors shall refer all press and other inquiries concerning the RFP and the Confidential Information, without further comment, to SUNY.

Agreed to this \_\_\_ day of \_\_\_\_\_, 2014

Name of Offeror: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

email address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Attachment 3  
LICH Real Estate Inventory

Sq Ft (000's)*	Vintage*	Building	Address	Major Use (C=Core)*
232	1970	Fuller Pavilion	339-357 Hicks 70-76 Atlantic	C - Patient care
109	1990	Othmer Pavilion	91-95 Pacific	C - Patient care
145	1905	Henry Street Building	97 Amity 340 Henry	C - Patient care
150	1983	Polak Pavilion	363 Hicks	C - Patient care
52	1850	Pohlemus Building	348-352 Henry	Patient care, Administration Landmark status
48	1948	349 Henry Building	349 Henry 115 Amity	Patient care
175	1997	Parking Garage	350-352 Hicks	Parking
8	1930's	Engineer Building	385-389 Hicks	Administration
12	1900's	Cobble Hill Condominium	124-134 Atlantic	Patient care Landmark status
41	1963	94 Amity Residences	94 Amity	Apartments rented out; Administration
3	1900's	86 Amity	86 Amity	Apartments rented out; Administration
4	1900's	82 Amity Residence	82 Amity	Administration
4	1900's	78 Amity	78 Amity	Administration
3	1900's	76 Amity	76 Amity	Administration
5	1900's	74 Amity	74 Amity 379-383 Hicks	Apartments rented out; Administration
6	1900's	113 Congress	113 Congress	currently vacant Landmark status
7	1900's	43 Columbia	43 Columbia	currently vacant Landmark status
13	1920's	336 Flatbush	336 Flatbush	currently vacant
20	1920-30's	184 Sterling	184 Sterling	rented out for patient care
15	1940	112 Pacific Street	112 Pacific Street	Patient care

\*Dimensions are approximate and may vary significantly from actual dimensions. Vintage is approximate and may vary significantly from actual construction date. Use may vary significantly from actual use upon closing of transaction. Landmark status should be verified by the Offeror.

Attachment 4  
Non-Collusion Certification

**BY SUBMISSION OF THIS PROPOSAL, OFFEROR AND EACH PERSON SIGNING ON BEHALF OF OFFEROR CERTIFIES, AND IN THE CASE OF JOINT PROPOSAL, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

[1] The proposed non-contingent purchase price of this proposal has been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such price with any other offeror or with any competitor;

[2] Unless otherwise required by law, the price which has been quoted in this proposal has not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other offeror or to any competitor; and

[3] No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

**A PROPOSAL SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE OFFEROR(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE OFFEROR SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**

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

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ as the act and deed of said corporation or partnership.

IF OFFEROR(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS	LEGAL RESIDENCE
_____	_____
_____	_____
_____	_____

IF OFFEROR(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES	LEGAL RESIDENCE
_____ President	_____
_____ Secretary	_____
_____ Treasurer	_____
_____ President	_____
_____ Secretary	_____
_____ Treasurer	_____

**Identifying Data**

Offeror: \_\_\_\_\_

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

City, Town, Zip \_\_\_\_\_

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

\_\_\_\_\_  
If applicable, Responsible Corporate Officer Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

Joint or combined proposals by companies or firms must be certified on behalf of each participant:

Legal name of person, firm or corporation

Legal name of person, firm or corporation

\_\_\_\_\_  
Signature \_\_\_\_\_

\_\_\_\_\_  
Signature \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Street Address

Street Address

\_\_\_\_\_  
\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
\_\_\_\_\_  
City, State Zip



## Exhibit A Standard Contract Clauses

State University of New York

February 11, 2014

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

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

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

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

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

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

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

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

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each

party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

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

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

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

adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or

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

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

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

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

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

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Exhibit A-1: Affirmative Action Clauses

## State University of New York

June 6, 2012

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

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

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

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

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

owned business enterprise goal and the women-owned business enterprise goal.

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

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

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

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

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

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

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to

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

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

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

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

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

(h) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal

employment opportunity program in effect as of the date the State Contract is executed.

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

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

2. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

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

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

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

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

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

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any

responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

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

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

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

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

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

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

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

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

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

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

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

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

5. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION. (i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and

shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

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

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION. For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of eleven percent (11%) for Certified Minority-Owned Business Enterprises and eight percent (8%) for Certified Women-Owned Business Enterprises.

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

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

7. DAMAGES FOR NON COMPLIANCE.

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

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

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

Exhibit B  
Procurement Lobbying Act Certification

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

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

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

SUNY's Procedures are available at:  
[http://www.suny.info/policies/groups/public/documents/policies/pub\\_suny\\_pp\\_039630.htm](http://www.suny.info/policies/groups/public/documents/policies/pub_suny_pp_039630.htm)

**Offeror must complete the following and attach to its proposal:**

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

**CERTIFICATION:**

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

Firms Name and Address:	
FEIN #:	
Telephone Number:	(____) _____ - _____
Fax Number:	(____) _____ - _____
Email Address:	
Offeror’s Name and Title:	
Offeror’s Signature:	
Date:	

Exhibit C  
Term Sheet

Offerors are directed to fill out all sections of the Term Sheet regardless of the project included in an Offeror's Proposal.

This Term Sheet does not create or give rise to any contractual or other legally binding or enforceable rights, obligations or liabilities of any kind on the part of SUNY, Downstate at LICH Holding Company, Inc. ("Holding Company"), or the Offeror; it being the intent of the parties that only a subsequently formalized written agreement covering the matters set forth herein, if duly authorized, executed and delivered by the respective parties, shall bind such parties and then only with respect to such covered matters. Indicate any deviations from the Term Sheet by marking deletions as ~~strike through~~ and additions as underlined. Note: that deviations may not be accepted by SUNY or Holding Company.

Offeror acknowledges that this Term Sheet does not include all terms and conditions for the proposed transactions. Moreover, Offeror acknowledges that the terms and conditions included in this Term Sheet are subject to change.

Note: "Contract of Sale," "agreement," "definitive agreement" and "contract" all refer to the formalized written agreement covering the matters set forth in this RFP.

- A. **Offeror** [describe Offeror as required in PART 2.J.1 above of the RFP]
- B. **Sites** – Indicate which properties are included (X) in the Proposal including proposed use.

LICH Real Estate Inventory

X	Building	Address	Proposed Use
	Fuller Pavilion	339-357 Hicks, 70-76 Atlantic	
	Othmer Pavilion	91-95 Pacific	
	Henry Street Building	97 Amity, 340 Henry	
	Polak Pavilion	363 Hicks	
	Pohlemus Building	348-352 Henry	
	349 Henry Building	349 Henry, 115 Amity	
	Parking Garage	350-352 Hicks	
	Engineer Building	385-389 Hicks	
	Cobble Hill Condominium	124-134 Atlantic	
	94 Amity Residences	94 Amity	
	86 Amity	86 Amity	
	82 Amity Residence	82 Amity	
	78 Amity	78 Amity	
	76 Amity	76 Amity	
	74 Amity	74 Amity, 379-383 Hicks	
	113 Congress	113 Congress	
	43 Columbia	43 Columbia	
	336 Flatbush	336 Flatbush	
	184 Sterling	184 Sterling	
	112 Pacific Street	112 Pacific Street	



**C. Health Services – [list services to be provided at which property location]****D. Financial Terms**

1. Non-Contingent Cash Purchase price: \$ \_\_\_\_\_

The cash purchase price will be due upon conveyance of the Property to the Successful Offeror.

2. Taxes

Successful Offeror shall pay all transfer taxes, mortgage recording taxes and sales taxes imposed by the City and the State of New York in connection with the transaction contemplated herein.

**E. Development Requirements**

The Successful Offeror will be required to finance all renovations necessary for the provision of any proposed health services. Describe all necessary renovations for the provision of proposed health services.

**F. Closing Dates for Contract of Sale**

1. The Closing Date shall be no more than six (6) months subsequent to execution and delivery of the contract of sale.
2. Holding Company shall have the right, in its sole discretion, to extend the Closing Date.
3. Upon the request of the Successful Offeror, Holding Company may grant no more than one one-month extension to the Closing Date upon receipt of \$170,000.00 in consideration of the extension.
4. Notwithstanding anything to the contrary contained herein, if the conveyance of the Property does not occur on or before the Closing Date as unequivocally established by Holding Company in a "time of the essence closing notice," Holding Company shall have the right to declare a default under the contract of sale and retain the down payment on behalf of itself and SUNY.

**G. Preliminary Obligations**

1. Successful Offeror is responsible for securing all necessary approvals.
2. Upon submission of its proposal and with confirmation \_\_\_\_\_ ( ) days prior to the Closing Date the Successful Offeror must transmit to Holding Company the following:
  - a) Evidence of financing and equity, in the form of executed financial commitments and statements of the availability of dedicated funds, certified by the appropriate officer of Successful Offeror, in an aggregate amount that is sufficient to satisfy the non-contingent purchase price and to renovate any of the properties in which health services will be provided, together with a revised construction budget for such space(s), on terms that Holding Company reasonably determines will permit the proposed development to be completed.
  - b) Letters of intent executed by potential tenants of any space(s) in which health services will be provided if by other than the Successful Offeror.
3. If Successful Offeror fails to satisfy any of the preliminary obligations then, at Holding Company's discretion, the agreement shall terminate, upon notice to Successful Offeror

from Holding Company. The Successful Offeror, SUNY, and Holding Company shall not have any further rights, duties or obligations hereunder, and Holding Company may retain the down payment on behalf of itself and SUNY as liquidated damages for Successful Offeror's failure to close.

#### **H. Conditions for Closing**

1. The Board of Directors of Holding Company shall have approved the disposition of the Property to the Successful Offeror in accordance with the Contract.
2. All approvals necessary to the disposition of the Property to the Successful Offeror in accordance with the Contract shall have been obtained.
3. Successful Offeror shall have paid for or have reimbursed the appropriate party for any additional appraisal for the Property.

#### **I. Additional Conditions of the Sale**

1. Due Diligence. The Successful Offeror will be permitted on the Property prior to closing for only non-invasive inspections or minimum work required to develop plans and pursue financing; provided that Holding Company has sufficient security to ensure the Successful Offeror will proceed to closing regardless of the testing results.
2. **The Property will be disposed of in "As Is" condition.**

#### **J. Deed Provisions**

The Deed shall prescribe the following, post-closing, covenants and conditions that shall encumber the Property:

1. If the following conditions are not satisfied, then Holding Company, in consultation with and on behalf of SUNY, shall have the right to declare that it is exercising its right of re-acquisition for condition broken and may thereupon re-enter the Property, without paying Successful Offeror or any subsequent owner of the Site any consideration:
  - a) The Successful Offeror has not provided health services in accordance with a schedule to be agreed upon with SUNY prior to the execution of a contract of sale.
  - b) Commencement of construction and/or renovation of the Property to be used for health services has not occurred within \_\_\_\_ (\_\_) months from the date of conveyance.
  - c) Licensing or similar authorizations necessary for the provision of health services is not in effect by the completion of construction or lapses, or is revoked, suspended, or surrendered, and a substitute provider reasonably acceptable to SUNY is not secured within \_\_\_\_ (\_\_) months of such event.
  - d) Successful Offeror has not obtained a Temporary Certificate of Occupancy ("TCO") for the properties in which health services are to be provided within a prescribed time period after commencement of construction, such time period to be agreed upon with SUNY prior to the execution of a contract of sale.

The time period for the satisfaction of the above conditions shall be subject to extensions as a result of "Unavoidable Delays". Unavoidable Delays shall mean delays incurred by Successful Offeror or its tenants due to strikes, lockouts or other labor disputes, severe weather conditions, earthquakes or other acts of God, inability to obtain labor or materials due to restrictions of

Governmental Authorities, enemy action, civil commotion, fire or other casualty, acts of war or terrorism, or court orders not resulting from any unlawful action or breach of contract of Successful Offeror or any affiliate thereof; provided, in each case. Successful Offeror shall have given SUNY and Holding Company notice of such unavoidable delays promptly following Successful Offeror having obtained knowledge of the occurrence of same, and where and when possible the Successful Offeror diligently pursues the completion of the project.

**K. Other**

1. As Is

- a) At the closing of the transactions contemplated by the Agreement, the Successful Offeror will covenant that it is fully familiar with the physical condition, state of repair and tenancies or occupancies encumbering the Property, will not make any claim regarding the condition of the Property, and agrees to accept the Property "as is". The Successful Offeror will be responsible for all required environmental remediation.
- b) At the closing of the transactions contemplated by the Agreement, the Successful Offeror will covenant that it has not been induced by and has not relied upon any representations, warranties or statements, whether oral or written, express or implied, made by SUNY or Holding Company, or any agent, employee or other representative of any of them or by any broker or any other person representing or purporting to represent any of them concerning the Property, its state of title, condition or state of repair, the absence or presence of hazardous waste and materials upon or under the Property, or any other matter affecting or relating to the Property or this transaction which are not expressly set forth in the agreement.

2. Continuing Obligations

- a) The Deed for each Property shall provide that no subsequent sale or refinancing shall occur without SUNY or Holding Company's prior approval (such entity to be designated in the contract of sale) for a period of \_\_\_\_\_ after closing, and as to such Property as will be used for health services, for a period of [not less than 20 years] \_\_\_\_\_ after closing.
- b) The Deed for each Property to be used for the provision of health services as specified in the contract of sale shall provide that all leases for spaces to be used for health services shall be subject to the prior approval of the New York State Department of Health for a period of \_\_\_\_\_ after closing.
- c) The foregoing provisions shall run with the land.

Exhibit D  
Conditions, Terms and Limitations

SUNY, acting on behalf of the Holding Company, is issuing this Request for Proposals ("RFP"). In addition to those stated elsewhere, this RFP and any transaction resulting from this RFP are subject to the conditions, terms and limitations stated below:

**A. The Property is to be disposed of in "as is" condition and is to be conveyed subject to all applicable title matters.**

**B. Successful Offeror Requirements**

1. At execution of the Agreement, the Successful Offeror must deliver a non-refundable down payment of not less than 10% of the total cash non-contingent purchase price. The balance of the non-contingent purchase prices shall be paid in immediately available funds upon the closing of the transactions contemplated by the Agreement.
2. Reimbursement for any additional appraisal cost, payable upon execution and delivery of the contract of sale.
3. Neither SUNY nor Holding Company, nor any of their respective officers, employees, and agents, make any representation or warranty or assume any responsibility for the accuracy of the information set forth in this RFP, the physical condition of the Property, the status of title thereto, its suitability for any specific use, the presence of hazardous waste, or any other matter. All due diligence is the responsibility of the Offeror and Offerors are urged to satisfy themselves with respect to the physical condition of the Property, the information contained herein, and all limitations or other arrangements affecting the Property. Neither SUNY nor Holding Company will be responsible for any injury or damage arising out of or occurring during any visit to the Property.

**C. Environmental Provisions:**

1. The Successful Offeror hereby absolutely waives, and agrees that neither it nor its successors and assigns, if any, shall make any claim for damages, contribution, indemnification or otherwise against SUNY or Holding Company, as applicable, which Successful Offeror or its successors or assigns may now or hereafter have or discover in connection with hazardous substances on, in, at, under, beneath, emanating from or affecting the Property, or in connection with any voluntary or required removal or remediation thereof (including, without limitation, claims relating to the release, threatened release, disturbance, emission or discharge of hazardous substances). Neither SUNY nor and Holding Company shall have any liability to Successful Offeror, or its successors or assigns, with regard to hazardous substances, on, at, in, under, beneath, emanating from or affecting the Property. Such waiver of liability shall cover, without limitation, any and all liability to Successful Offeror, both known and unknown, present and future, for any and all environmental liabilities, including without limitation any and all strict and other liability, costs, claims, fines, penalties, damages under any and all environmental laws with respect to investigating, remediating, mitigating, removing, treating, encapsulating, containing, monitoring, abating, or disposing of any hazardous substance, and any costs incurred to come into compliance with environmental laws.
2. The Successful Offeror agrees to indemnify, defend, reimburse, and hold harmless SUNY and Holding Company, and each of their respective officers, directors,

employees, agents, successors, and assigns, and each of them from and against any and all environmental liabilities under any environmental laws.

**D. Other**

1. The Property and the health services will be subject to, the provisions of the New York City Zoning Resolution, all other applicable laws, regulations, and ordinances of all Federal, State and City authorities having jurisdiction, and any similar development limitations, as all of the foregoing may be amended from time to time. Without limiting the foregoing, closing on a proposed development that requires action under the New York City Zoning Resolution, may be subject to the New York State Urban Development Act and Public Authorities Accountability Act requirements, either City or State environmental quality review ("CEQR" or "SEQRA"), publication of notice of the filing of the general Project plan, scheduling and conducting a public hearing and responding to negative comments, if any. CEQR or SEQRA compliance if required shall be solely at the expense of the Successful Offeror. Holding Company will cooperate with the Successful Offeror in obtaining necessary approvals, however neither SUNY nor Holding Company shall be responsible for Successful Offeror to obtain such approvals or any authorization required by law to provide the health services.
2. Holding Company invites the participation of real estate brokers acting on behalf of and with the authorization of identified principals, provided that the broker arranges for the payment of its commission or other compensations exclusively by the Successful Offeror. It shall be a condition to the Award that the Successful Offeror agrees to pay any commission or other compensation due to any broker in connection with the development of the Property, and to indemnify and hold harmless SUNY and Holding Company from any obligation, commission or compensation brought by any broker by reason of the sale of the Property or the development thereof. Such broker(s) shall be identified in the Agreement. Holding Company warrants and represents that it has not retained any broker in connection with the proposed development of the Property. Liability, cost and/or expense incurred by SUNY or Holding Company as a result of any claim of commission or compensation brought by any broker by reason of the sale or the development of the property shall promptly be reimbursed by Successful Offeror.
3. Only Proposals signed by principals will be considered responsive.
4. This is a Request for Proposals **not** a Request for Bids. SUNY and Holding Company shall be the sole judge of each Offeror's conformance with the requirements of this RFP and of the merits of the individual proposals. SUNY and Holding Company reserve the right to waive any conditions or modify any provision of this RFP with respect to one or more Offerors, to negotiate with one or more of the Offerors with respect to all or any portion of the Property, to require supplemental statements and information from any Offerors, to establish additional terms and conditions, to encourage applicants to work together, or to reject any or all proposals, if in its judgment it is in the best interest of SUNY or Holding Company to do so. If all proposals are rejected, this RFP may be withdrawn and the Property may be retained, and re-offered under the same or different terms and conditions, or disposed of by another method. In all cases, SUNY and Holding Company shall be the sole judge of the acceptability of the proposals. SUNY will enforce the submission deadline stated in the RFP. The timing of the conditional selection may differ depending upon the degree to which further information on individual proposals must be obtained or due to other factors that SUNY or Holding Company may consider pertinent. All proposals become the property of SUNY and Holding Company.

5. All terms in this RFP related to the permitted use and bulk of the Property shall be as defined in the New York City Zoning Resolution and any applicable similar development limitations and controls. Where any conflict arises in such terms, the most restrictive shall prevail.
6. Except as specifically provided herein, the Successful Offeror will pay all applicable taxes payable with respect to the Property, including transfer and mortgage recording taxes. Offeror will be required to pay the New York City Real Property Transfer Tax and New York State Real Estate Transfer Tax, notwithstanding any exemption from sale on account of the SUNY or Holding Company's involvement in the transaction.
7. In furtherance of SUNY and Holding Company's missions and the objectives set forth in this RFP, the deeds conveying the Property to the Successful Offeror shall contain redevelopment obligations as well as restrictions on use and transfer of the Property. Failure to comply with these restrictions will result in a right by SUNY or Holding Company to re-enter and re-acquire the Property for no consideration.
8. Subject to the publication of the proposals as set forth in this RFP, upon submission of a proposal to this RFP, Offerors, and their representatives and agents, shall treat their proposals and all information obtained from SUNY and/or Holding Company in connection with this RFP (the "Confidential Information") confidentially, and shall not discuss, publish, divulge, disclose or allow to be disclosed the Confidential Information to any other Offerors or any other person, firm or entity, including press or other media, without SUNY's prior written approval. Offerors shall refer all press and other inquiries concerning the RFP and the Confidential Information, without further comment, to SUNY.

## Exhibit E

## Appraisal of LICH Property

(millions)

	Appraisal One <sup>i</sup>	Appraisal Two <sup>ii</sup>	Broker Valuation
Core Property	\$155	\$138 - \$145	\$144
Parking Garage	\$26	\$23	\$18
Other Property	\$78	\$67 - \$70	\$116
<b>Total</b>	<b>\$259</b>	<b>\$228 - \$238</b>	<b>\$278</b>

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<sup>i</sup> Assessed values assume highest and best use, in most cases residential use.

<sup>ii</sup> Appraisal Two contemplates the assessed value of certain properties should they be acquired collectively. Appraised value is a range with the upper value reflecting the combined value.