NYS Office of General Services
Serving New York

REQUEST FOR PROPOSAL (RFP) NUMBER 1819

SOLICITED BY THE

NEW YORK STATE OFFICE OF GENERAL SERVICES

ON BEHALF OF THE

NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES

FOR

INFORMATION TECHNOLOGY RISK ASSESSMENT SERVICES

BID DUE DATE: November 4, 2014 @ 2:00 PM

MANDATORY INTENT TO SUBMIT A PROPOSAL DEADLINE: September 30, 2014@ 2:00 PM

ISSUE DATE: September 5, 2014

Designated Contact:
Nancy L. Dougherty
Voice: 518-474-5981
E-mail: nancy.dougherty@ogs.ny.gov

Alternate Designated Contact:
Warren Joscelyn
Voice: 518-474-5981
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1. Introduction

1.1 Overview

The New York State Office of General Services (OGS) is soliciting proposals on behalf of the New York State Office of Information Technology Services (ITS). ITS intends to contract with a firm to do an information security risk assessment of the NYS Enterprise to identify areas of risk and recommended prioritized mitigation strategies and good practices.

1.2 ITS background

Prior to the formation of ITS, the Office for Technology (OFT) provided central IT support for mainframes, E-mail and Directory Services to some state agencies and local governments. Most IT services, including application development, maintenance and infrastructure were performed in and managed by the state agencies themselves. Each agency employed their own IT and information security staff and budget. The former Office of Cyber Security (OCS) which was within the NYS Department of Homeland Security and Emergency Services, provided information security policies, training and services to NYS agencies, but did not have the authority to require agencies to comply with these policies, or take advantage of available training and services.

The information security function has been historically underfunded in most agencies. In tight budget years agency funding for IT and information security initiatives were disproportionately cut to assure adequate funding for agency programs. Over time, these decisions increased agencies' cyber and information security-related risk because they were unable to refresh technologies, train staff, maintain infrastructure, and mature the information security function as a component of agencies' overall risk management efforts.

To enhance and ensure that these critical areas are properly resourced, Governor Andrew Cuomo initiated IT Transformation, with the goal of creating more value per dollar spent on information technology and information security. As part of this transformation, agency IT and Information Security resources; and associated functions, budgets, and computing infrastructures were merged into ITS. Nine clusters of agencies with similar missions and data sharing needs were formed. IT and information security staff were restructured into these clusters to facilitate resource sharing. Common cyber security and information security functions such as overall security program, governance and risk management, secure engineering/architecture, incident response, and vulnerability and threat management, were centralized in ITS' Enterprise Information Security Office (EISO). ITS Transformation efforts to standardize, consolidate, upgrade and centrally maintain technologies, information assets and infrastructure create efficiencies and improve IT services.

Further information about IT Transformation and the structure of ITS is available at: http://www.ittransformation.ny.gov/.

While providing efficiencies and cost savings, transformation and the associated consolidation of previously agency-managed IT resources, technologies, information, and functions has also introduced significant unknowns and unquantified risk to NYS and its citizens. The ITS (EISO) is seeking vendor assistance to help identify, assess and prioritize the State's current information security risks, evaluate the State's overall cyber security posture against the National Cyber security Framework, and provide a prioritized plan and recommended strategies to mitigate and manage risk going forward.

1.3 Designated Contact

In compliance with the Procurement Lobbying Law, Nancy Dougherty, Contract Management Specialist, NYS Office of General Services, Division of Financial Administration has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email, and/or voice for all inquiries regarding this solicitation.

Nancy Dougherty, Contract Management Specialist I
NYS Office of General Services
Financial Administration
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Email: nancy.dougherty@ogs.ny.gov

In the event the designated contact is not available, the alternate designated contacts are:

Warren Joscelyn, Contract Management Specialist I
NYS Office of General Services
Financial Administration
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1 518 474 5981
Email: Warren.Joscelyn@ogs.ny.gov

Diane Robinson, Contract Management Specialist II
Voice: 1-518-474-5981
Email: Diane.Robinson@ogs.ny.gov

William Macey, Contract Management Specialist III
Albany, New York 12242
Voice: 1-518-474-5981
Email: William.Macey@ogs.ny.gov

For inquires related specifically to Minority Women-Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contact is:

Anuola Surgick, Compliance Specialist
NYS Office of General Services
Minority and Women-Owned Business Enterprises
Corning Tower, 29th Floor, ESP
Albany, NY 12242
Voice: 1-518-473-7083
Email: Anuola.Surgick@ogs.ny.gov

1.4 Minimum Proposer Qualifications

Proposers are advised that the State's intent to ensure that only responsive, responsible, qualified and reliable contractors enter into a contract to perform the work as defined in this document.

The State considers the following qualifications, sufficiency, capacity and experience to be a pre-requisite in order to be considered as qualified proposer for purposes of the solicitation.

The following minimum requirements **must** be met by each proposer:

A. The proposer has been in continuous business and provided Information Security and Risk Assessments Services as an established line of business for a minimum of 5 years.

B. The Proposer must have performed a minimum of three (3) baseline security risk assessments of similar scope within the past three (3) years where at least one (1) of which must be for a federal, state or local government entities, that support multiple operating systems and networking technologies in which the vendor was the

prime contractor. Specifically, to be considered as similar in scope, the qualifying baseline risk assessments MUST have been performed on organizations that:

- have a minimum of 5,000 employees; *or*
- have a minimum of 5,000 endpoint devices and/or servers

1.5 Key Events

The Table below outlines the tentative schedule for important action dates.

Action	Date
OGS issues Request for Proposal (RFP) #1819	9/5/2014
Mandatory Intent to Submit a Proposal Deadline	9/30/2014 @ 2:00 PM EST
OGS Question Submission Deadline	9/30/2014 @ 2:00 PM EST
OGS Issues a Response to Written Questions (estimated)	10/14/2014
Bid Due Date to OGS	**11/4/2014 @ 2:00 PM EST**
Contract Start Date	Upon OSC Approval

1.6 Mandatory Intent to Submit a Proposal

Vendors who wish to submit a proposal must register their Intent to Submit a Proposal by sending electronic notice to Nancy Dougherty, via e-mail at nancy.dougherty@ogs.ny.gov Vendors shall include their company name, address, phone, contact name, title, and email address. Vendors assume sole responsibility for timely receipt of Intent.

Only vendors who have submitted the mandatory Intent to Submit a Proposal will be allowed to submit proposals and receive updates and responses to questions regarding this RFP. Please note, by submitting the Intent to Submit a Proposal, the Contractor is not obligated to submit a proposal.

Deadline for submission of Intent to Submit a Proposal will be as stated in “Section 1.5– Key Events”. Vendors assume sole responsibility for timely receipt of the intent notification.

End Introduction Section

2. Bid Submission

2.1 RFP Questions and Clarifications

Questions and requests for clarification regarding this RFP shall only be directed to:

Nancy L. Dougherty
OGS Division of Financial Administration
ESP, Corning Tower, 32nd Floor
Albany, NY 12242
Phone: 1-518-474-5981
e-mail: nancy.dougherty@ogs.ny.gov

Questions and requests for clarification are only accepted via e-mail or in writing. Official answers to questions will be provided via an addendum to all registered Proposers.

Deadline for submission of questions will be as stated in "Section 1.5 - Key Events".

2.2 Proposal Format and Content

In order for the State to evaluate bids fairly and completely, proposers must follow the format set forth herein and must provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a bid to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the bid.

ITS requires substantial experience and expertise, Offeror must demonstrate that experience through verifiable references. The experience must be relevant, and must be for services comparable in scale and scope to the ITS environment. ITS understands that there may be a need for a potential Contractor to use one or more Subcontractors to satisfy certain requirements. If subcontracting is required, all provisions contained within Section 6.12 Subcontractors of this RFP must be met. ITS reserves the right to approve all Subcontractors as part of this contract.

Proposers are encouraged to include all information that may be deemed pertinent to their proposal. Proposers may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the Proposer's original proposal. If further clarification is needed during the evaluation period, OGS will contact the Proposer.

Note: OGS / ITS reserves the right to request any additional information deemed necessary to ensure that the Proposer is able to fulfill the requirements of the contract.

2.3 Technical Proposal

No overt statements about costs shall be included in the Technical Proposal.

2.3.1 FORMAL OFFER LETTER

Proposers must submit *Attachment 3 - Formal Offer Letter*. A Proposer Representative authorized to make contractual obligations must sign the Formal Offer Letter. All requested information needs to be included.

2.3.2 PROPOSAL SUBMISSION CHECKLIST

Proposer must submit *Attachment 2 – Proposal Submission Checklist*.

2.3.3 MINIMUM REQUIREMENTS

Proposers must submit verification of minimum requirements as noted above in "Section 1.4 Minimum Proposer Qualifications". Failure to meet the minimum Proposer qualifications will result in Proposer disqualification.

- Proposer must also complete and sign *Attachment 4 - Proposer Qualification Certification.*

2.3.4 PROJECT APPROACH

A project approach that specifies how the proposer will achieve the required deliverables identified in "Section 5 –Scope and Deliverables".

1. FOR **BOTH** THE ENTERPRISE AND ITS CLUSTERS DESCRIBE THE FOLLOWING:

a. Your plan of approach to establishing formal risk assessment services described in this RFP.

b. Your plan of approach for completing the risk assessment.

c. Your plan of approach to the completing the assessment of data center security controls.

d. Your plan of approach to completing a privileged account assessment.

e. Your plan of approach to completing a data share partnership assessment.

f. Step by step approach and timeline for achieving all the deliverables described in Section 5.

2. Describe your firm's proposed onsite staffing plan(s) to include the number of staff, titles and roles of each. This plan should address each deliverable and the composition of the team(s) associated with each... The written staffing plan will also identify the timeframe the role will be involved, level at which they will participate over that timeframe.

3. Provide a timeline for achieving each deliverable

4. Identify plans for simultaneously addressing deliverables and work efforts

5. Describe your firms proposed use of subcontractors listed within your firm's cover letter.

6. Describe any data and support you may require of ITS.

2.3.5 EXPERIENCE AND QUALIFICATIONS

1. COMPANY EXPERIENCE AND QUALIFICATIONS

a. Describe your firm's experience as an Information Security and Risk Assessment company.

b. Please include how long your company has been providing this service within your current business structure.

c. Describe your firm's experience as a company that helps lead and support large entities to prioritize, plan, and recommend strategies to mitigate and manage information security risks.

d. Provide a detailed description of services provided for a completed baseline security assessment and a listing of the customers and the timeframes of the engagements.

e. Provide three (3) References to support the company's experience *Attachment 5 – Proposer References.*

2. PROPOSED PERSONNEL EXPERIENCE AND QUALIFICATIONS

a. Identify and describe, in detail, the professional experience of the onsite Project Manager and Technical Writer proposed by your firm to lead the project, and provide resumes for each.

b. Proposers must provide resumes and certifications for all proposed staff.

c. Proposers must only submit resumes of individuals who are available and will actually be assigned to the Project if their Proposal is successful. ITS reserves the right to withdraw

acceptance of a Proposal or cancel a tentative award if a proposed lead staff becomes unavailable.

d. Complete and submit *Attachment 6 – Personnel / Titles / Certifications*.

2.4 Cost Proposal

All Proposers must submit their proposed rates on ***Attachment 1 – Cost Proposal Form***.

Proposer shall not provide alternative pricing or deviate from the Cost Proposal Form. Alternative pricing methodologies will not be considered and may result in the rejection of the quote.

2.5 Administrative Proposal

a) Confidentiality Form (Attachment 7)

b) Administrative Proposal (Appendix B –Required Forms)

c) Vendor Responsibility Questionnaire [(VRQ) (RFP section 6.17 and link in Appendix B)]

Proposers are reminded of the requirement as described in section 6.17, and are requested to complete the online questionnaire located on the OSC VendRep System website prior to bid submission. If the vendor has previously certified responsibility online, it shall ensure that the VRQ was recertified in the last 6 months. Important Notes:

- Insurance – Proposers are reminded of the insurance requirements as described in section 6.6. The selected Proposer will be required to provide all necessary documentation upon notification of selection.
- M/WBE & EEO Requirements- Proposers are reminded of the requirements as described in section 6.8.
- Document Consistency - An award will only be made to the entity which has submitted bid. All submitted documents must be consistent with official name of bidding entity, FEIN and NYS Vendor ID number.
- A Proposer shall be registered with the NYS Department of State as an entity authorized to conduct business in New York State.

2.6 Bid Preparation

All bids must be completed in ink or machine produced. Bids submitted handwritten in pencil will be disqualified.

2.7 Firm Offer (Proposal Effective Period)

Each Proposer must hold its offer firm and binding for a period of at least three hundred sixty-five (365) days from the Proposal Due Date and Time as set forth in “Section 1.5 – Key Events” of the RFP. In the event that Federal or State funding is not approved or received for this project or a contract is not approved by OSC within the three hundred sixty-five (365) day period, Proposer offers shall remain firm and binding until ITS has secured funding and a contract is approved by OSC, unless the Proposer delivers to ITS written notice of withdrawal of its Proposal.

2.8 Packaging of RFP Response

The Proposal should be sent in a single shipping carton, but must be organized in three (3) parts:
(1) Administrative Proposal; (2) Technical Proposal: and (3) Cost Proposal.

Therefore, each part must be bound and packaged in separate, sealed envelopes/containers. Electronic copies of the corresponding Proposer’s Administrative Proposal, Technical Proposal, and Financial Proposal (collectively, submissions) must accompany each hard copy submission.

Submit Quantities as indicated in *Attachment 2 – Proposal Submission Checklist*:

- Technical Proposal
- Cost Proposal
- Administrative Proposal

Should there be a discrepancy between the CD-R and the original hard copy, the hard copy takes precedent.

The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Proposer's complete name and address
- Solicitation Number: 1819
- Bid Due Date and Time: (as indicated in “Section 1.5 - Key Events”)
- Bid for: Information Technology Risk Assessment Services.

Each package (i.e., Administrative Proposal, Technical Proposal, and Cost Proposal) must be separately sealed and have a label on the outside of the package or shipping container outlining the following information:

Proposal Address Label:

OGS/ITS RFP No. 1819
PROPOSER NAME
PROPOSER ADDRESS

Indicate package contents, as applicable:
ADMINISTRATIVE, TECHNICAL or COST PROPOSAL

In the event that the Proposer fails to provide such information on the cover of the sealed packages, OGS/ITS reserves the right to open the package to determine its contents which **may necessitate the premature opening of the bid and may compromise confidentiality.** Proposer shall have no claim against the State arising from such opening and such opening shall not affect the validity of the Procurement. Notwithstanding OGS/ITS right to open the package to ascertain the contents, Proposer assumes all risk of late delivery associated with the Submissions not being identified, packaged, or labeled in accordance with the foregoing requirements.

2.9 Instructions for Bid Submission

Note that these instructions supersede the generic instructions posted on the OGS website bid calendar.

Only those Proposers who furnish all required information and meet the mandatory requirements will be considered.

Submit all required bid documents including signed bid addenda if any, to the NYS Office of General Services - Division of Financial Administration at the following address:

OGS Financial Administration, Contract Unit
Empire State Plaza, Corning Tower, 32nd Floor
Albany, NY 12242
Attn: Nancy Dougherty
Bid # 1819

E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.

The State of New York will not be held liable for any cost incurred by the Proposer for work performed in the preparation and production of a bid or for any work performed prior to the formal execution and approval of a contract.

Bids must be received in the above office on or before 2:00 PM on the date indicated in Section 1.5 - Key Events. Proposers assume all risks for timely, properly submitted deliveries. The received time of bids will be determined by the clock at the above noted location.

NO CONSIDERATION WILL BE GIVEN TO BIDS RECEIVED AFTER THE STATED DATE AND TIME.

Proposers mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the bidding entity shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late Bid submissions. Proposers are cautioned that receipt of bids in the OGS Mailroom is NOT sufficient, and that at least historically, one overnight carrier has been known to deliver its packages to the OGS Mailroom. OGS cannot be responsible for the actions of your chosen carrier.

Bids must remain open and valid for 365 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Proposer. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 365 day period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the bid in writing by Proposer. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing Office to the successful Proposer. This RFP remains the property of the State at all times, and all responses to this RFP, once delivered, become the property of the State.

Important Building Access Procedures for Delivered Bids:

Building Access procedures are in effect at the Corning Tower. Photo identification is required. All visitors must register for building access, for delivering bids. Vendors are encouraged to pre-register by contacting the OGS Finance Office at 518-474-5981 at least 24 hours prior to the bid opening. Pre-registered visitors are to report to the visitor desk located at the Concourse level of the Corning Tower. Upon presentation of appropriate photo identification, the visitor will be allowed access to the building.

Upon arrival at the visitor desk, visitors that have not pre-registered will be directed to a designated phone to call the OGS Finance Office. The Finance Office will then enter the visitor's information into the building access system. Access will not be allowed until the system has been updated. Visitors are encouraged to pre-register to ensure timely access to the building. Vendors who intend to deliver bids or conduct business with OGS should allow extra time to comply with these procedures. These procedures may change or be modified at any time.

Visitor parking information can be viewed at the following OGS web site:

http://ogs.ny.gov/BU/BA/Parking/Visitor/

End Proposal Submission Section

3. Administrative Information

3.1 Issuing Office

This RFP is being released by the New York State Office of General Services, Financial Administration on behalf of the New York State Office of Information Technology Services.

3.2 Method of Award

This RFP is a single award solicitation which is intended to be awarded on a "best value" basis. A "best value" award is one that optimizes quality, cost, and efficiency. ITS and OGS will evaluate responsive and responsible Offerors' proposal for all of the requirements specified in this RFP, in accordance with the evaluation criteria set forth in "Section 4 - Evaluation and Selection Process".

OGS will only contract with a single Offeror. If the Offeror's proposal calls for the performance of work by subcontractors, the Offeror shall be the Contractor and shall retain full responsibility for all aspects of the work performed. ITS reserves the right to approve (or disapprove) any or all subcontractors and the work performed by them as part of its contract with the Offeror, as set forth in "Section 6.12 - Subcontractors".

Upon determination of the best value proposal, a contract, between ITS and the successful Proposer will be delivered to the successful proposer for signature and shall be returned to the issuing office for all necessary State approvals. Upon final approval, a completely executed contract will be delivered to the contractor.

The Grand Total bid amount of the Contractor, shall be used to establish the contract value. The established contract value shall not be exceeded.

3.3 Price

The Offeror's Cost Proposal Form (Attachment 1) require that the Offeror state a proposed price that must represent its fee for the ITS Risk Assessment initiative.

The Cost Proposal form includes two sections: Section One for the known/established deliverables; and Section Two for rates that will be used in the development of work plans for deliverables or additional services that may be requested during the course of the project. Incomplete cost proposals, or cost proposals containing modifications/alterations / qualifiers/ranges/exceptions will be rejected.

- In the first section, price shall be represented as the Offeror's fixed price for each of the established deliverables and services described in "Section 5.3 - Established Deliverables." These prices bid shall be firm for the contract term.

- In the second section, price shall be represented as the Offeror's proposed hourly rates for the 5 labor categories/titles/roles defined in "Section 5.3.1 - Contractor Key Personnel." An estimated number of annual hours will be used on the Cost Proposal Form for evaluation purposes. Hourly rates bid will be firm for the contract term. Proposers must provide an hourly rate for each title/work category listed on the Cost Proposal Form. These titles/categories will be the only titles/categories that will be used throughout the term of the contract for additional services.

Price shall be inclusive of all costs including travel*, licenses, insurance, administrative, profit and other ancillary costs; all labor and equipment cost; all administrative, reporting or other requirements; all overhead costs and profit. Details of service not explicitly stated in these specifications, but necessarily attendant thereto are deemed to be understood by the Contractor and included herein.

***** ITS staff are primarily located in and around Albany, New York (the Capital District) and the expectation is that onsite work will be completed within ITS offices in the Capital District. Time spent working at ITS main office in Albany will not be considered travel eligible and will not be reimbursed. If it is determined that travel

is required outside the Capital District in support of specific deliverables it must be pre-approved by ITS in writing. Pre-approved travel, meals or lodging expenses shall be reimbursed in accordance with the not-to-exceed rates authorized by the NYS Office of the State Comptroller (OSC).

Proposers must submit pricing using the **Attachment 1 – Cost Proposal Form** contained in this document. Proposers must provide pricing (or identify no charge) for all items on the Cost Proposal Form.

Although this is a deliverable base contract the State of New York expects that the rates proposed for additional service staff shall be competitive and reflect the current marketplace for similar services in New York. The Contractor warrants that pricing offered to ITS is the same as or lower than that offered to its customers who are similarly situated with respect to Information Technology Risk Assessments and related services.

The State of New York will not be held liable for any cost incurred by proposers for work performed in the preparation and production of a bid or for any work performed prior to the formal execution and approval of a contract.

3.4 Term of Contract

This contract will commence upon OSC approval and will be in effect for two (2) years.

It is anticipated that the specified deliverables would be completed within the first six (6) months of the contract.

The State of New York retains the right to cancel this contract for convenience, provided that the Contractor is given at least thirty (30) days written notice of ITS's intent to cancel. Any cancellation by ITS under this section shall in no event constitute or be deemed a breach of the contract resulting from this RFP and no liability shall be incurred by or arise against ITS, its agents and employees therefore for lost profits or any other damages resulting therefrom. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. See "Section 6.16 – Termination".

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3.5 Method of Payment

For established project deliverables, progress payments may be made at the discretion of ITS. In such case, the contractor may submit invoices for agreed upon percentages based on completion percentage of the deliverable – up to eighty percent (80%) of the deliverable price. The final twenty percent (20%) shall not be billable until final acceptance as described in Section 3.6 herein.

Additional Services (see Section 5.6) may be established as project deliverables, or as hourly rate services. If established as a project deliverable, the process above shall be used. If established as hourly rate services, invoices for payment shall be submitted at the end of each month for services satisfactorily completed during that month.

Invoices will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Each invoice **must** be itemized and include the following information: Contract ID number (i.e.: C00XXXX); Company FEIN; Vendor ID number (Statewide Financial System - SFS); Date(s) of Service;

Invoices without the above stated information will be returned to Contractor to be completed as required in the paragraph above. **Payment will not be issued and will not be due and owing until a corrected invoice is received and approved by ITS/OGS**.

All Invoices are to be submitted for payment to:

BSC Accounts Payable
Office of General Services **-or-** **accountspayable@ogs.ny.gov**

P. O. Box 2117
Albany, New York 12220-0117

Also, a copy of the Invoice must be simultaneously forwarded to the Office of Information Technology Services for review and approval at the following address:

Finance Administration
NYS Office of Information Technology Services
Empire State Plaza, PO Box 2062, Albany, NY 12220-0062

3.6 Electronic Payments

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptrollers website at www.osc.state.ny.us/epay/index.htm , by e-mail at epunit@osc.state.ny.us , or by phone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new Statewide Financial System (SFS), the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

3.7 Past Practice

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

3.8 Exceptions to RFP

The Issuing Office will consider all requests to waive any bid requirement. However, Proposers should be aware that failure to obtain a waiver of any bid requirement in advance of bid submission could result in rejection of Proposer's bid and disqualification from the bidding process. Proposers wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the 'Questions Due Date' as identified in "Section 1.5 – Key Events". The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either via addendum (if the response results in a change to the RFP), or directly to the requesting vendor.

3.9 Dispute Resolution

It is the policy of the Office of General Services' Financial Administration to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations or contract awards. OGS Financial Administration encourages vendors to seek resolution of disputes through consultation with OGS Financial Administration staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the designated contact person identified on the front of the bid document.

3.10 Examination of Contract Documents

- Each Proposer is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.
- Each Proposer shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the state as an excuse for any failure or omission on the part of the Proposer to fulfill every detail of all the requirements of the documents governing the work. The Proposer, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such Proposer might have fully informed itself prior to bidding.
- Any addendum issued prior to the bid due date must be acknowledged by signature, dated and be submitted on or before the bid due date. In awarding a contract any written addenda will become a part thereof.
- Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services or the Office of Information Technology Services shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, shall become a part of the contract.

3.11 Contractor Responsibilities

The State will contract only with the successful Proposer. The Issuing Office considers the Contractor to be the sole Contractor with regard to all provisions of the RFP, and the contract resulting from the RFP.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this RFP or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor who carry out any of the provisions of any contract resulting from this RFP.

3.12 Inspection of Books

It is expressly understood and agreed that the Office of General Services, the New York State Comptroller and the Office of Information Technology Services shall have the right to inspect and audit the Contractor's records relating to the Contract, in accordance with his statutory responsibility to examine the books and accounts of every Agency. The New York State Comptroller and ITS require, and the Contractor agrees to, the retention of all material that is pertinent to an audit of the operations under any contract resulting from this RFP for a full six-year period.

3.13 Glossary of Terms

"Issuing Office" shall mean the Office of General Services Division of Financial Administration.

"Contractor" shall mean a successful company(s) awarded a contract pursuant to this RFP.

"Request for Proposal" or "RFP" shall mean this document.

The "State" or "New York State" shall mean The People of the State of New York, which shall also mean the New York State Office of General Services and the Office of Information Technology Services (ITS).

"Commissioner" shall mean the Commissioner of General Services or the Director of the Office of Information Technology Services or duly authorized representative.

"Offeror", "Proposer" or "Proposer" shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the State pursuant to this RFP.

"Services" shall mean the Information Technology Risk Assessment Services that are the subject of this RFP.

"Enterprise" in this RFP shall mean all executive branch agencies in New York.

"Confidential Information" shall include any information where unauthorized access, disclosure, modification, destruction or disruption of access to or use of such information could severely impact the SE, its critical functions, its employees, its

customers, third parties, or citizens of New York. This term shall be deemed to include, but is not limited to, the information encompassed in existing statutory definitions.

3.14 Rules of Construction

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this RFP, refer to this RFP.

3.15 Consultant Replacement

Contractor shall maintain the availability of the selected Consultant throughout the term of this Contract and any extensions. Contractor shall obtain ITS approval prior to making any changes in staff assigned to this Project. Proposed replacement staff(s) shall have equal or more advanced skills and experience and shall be provided by the Contractor at the same or lower hourly rates. *ITS may, in its sole discretion, remove any Contractor staff from the position for any reason and Contractor shall replace the staff within 15 business days.* In the event the staff is replaced, the Contractor shall, at its own expense, provide an orientation to the Project for the replacement Consultant.

3.16 Consultant Replacement between Tentative Award and Contract Approval or Commencement of Work

If for any reason a Contractor provides notice to ITS that the Contractor will be unable to provide proposed staff after a tentative award has been made, but prior to approval of the Contract or prior to the scheduled commencement of work by the Consultant, then ITS may choose to withdraw the award or terminate the Contract and make a subsequent award to the Contractor with the next highest ranking Consultant. The selected contractor shall be required to provide such notice if such a situation arises. (Also see “inspection” in Section 6.10)

End Administration Section

4. Evaluation and Selection Process

4.1 Proposal Evaluation

Responsive proposals will be evaluated and scored for best value based upon the criteria set forth in this Section. A committee of employees from OGS and ITS will evaluate the proposals to determine the best value to the state.

Proposers are encouraged to include all information that may be deemed pertinent to their bid. Proposers may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the Proposer's original bid. If further clarification is needed during the evaluation period, OGS will contact the Proposer.

4.2 Proposal Scoring

a. PROPOSER EXPERIENCE AND QUALIFICATIOINS (21%)
Each Proposal will be evaluated as to the quality of its relevant experience and qualifications (including that of its proposed personnel) and length of service in both the industry and with the Proposer, demonstrating its ability to perform the required services.

b. PROJECT APPROACH (31%)
Each Proposal will be evaluated as to the completeness of and the extent to which the operational information meets the goals and requirements of the Solicitation.

c. QUALITY AND COMPLETENESS OF PROPOSAL (5%)
Each Proposal will be evaluated as to the extent to which the proposal satisfies and addresses each requirement of the Solicitation. Consideration will also be given to the overall organization of, and ease of navigation of the submitted proposal.

d. MWBE or Small Business Enterprise (3%)

- The Proposer is a New York State Certified Minority-Owned Business ***or***
- The Proposer is a New York State Certified Women-Owned Business ***or***
- The Proposer is a Small Business as defined in Executive Law Section 310(20)

Note: Although a Proposer may meet more than one criteria, credit is to be awarded for only one category, not multiple categories.

e. CONTRACT FEE (40%)
The cost to the State will be evaluated in relation to all cost proposals submitted by responsive Proposers.

4.3 Evaluation Process

4.3.1 SUBMISSION REVIEW

A committee of OGS and ITS employees will evaluate each proposal and initially determine whether a proposal is responsive to the requirements of the Solicitation. Proposals that are nonresponsive, in the sole opinion of OGS and ITS, may be rejected. All bids passing the submission review requirements for responsiveness will be evaluated.

4.3.2 TECHNICAL EVALUATION (60%)

The technical evaluation committee will subsequently evaluate and score each responsive proposal for items a–d listed above. ITS intends to contact company references and reference check information will be considered in the technical evaluation. It is the responsibility of the Proposer to ensure availability of the provided references. The inability to contact a given reference will be reflected in the technical scoring and/or may result in rejection of the proposal.

The evaluation team will grade each proposal criteria (a-c) using a 0 – 10 scale. That grade will be applied to the category weight to determine the category points. Example: a perfect grade of 10 in each category (a -c) would receive 570 points (57%).

For item d the evaluation team will award 30 points (3%) if proper certification declaring MWBE and/or Small Business criteria is met.

4.3.3 COST PROPOSAL EVALUATION (40%)

OGS Division of Financial Administration will evaluate all cost proposals from responsive Proposers. The cost proposal with the lowest total fee will be awarded the maximum possible points, (refer to item e listed above). Each subsequent proposal will receive a proportionate number of points using the following formula: low bid / bid being evaluated multiplied by category weight.

4.3.4 FINAL COMPOSITE SCORE (100%)

Scores from each of the Proposers will be totaled and the Proposer having the highest score will be ranked number one; the Proposer with the second highest total score will be ranked number two and so on. Proposer having the highest score will be ranked number one; the Proposer with the second highest total score will be ranked number two and so on.

4.4 Notification of Award

After the evaluation, all Proposers will be notified of the name of the Selected Proposer. The Selected Proposer will be notified that its submitted proposal has been selected and that a contract will be forthcoming for execution. The original proposal, and any additions or deletions to the proposal become part of the contract.

Public announcements or news releases pertaining to any contract resulting from this Solicitation shall not be made without prior approval from the Issuing Office.

End Evaluation and Selection Process Section

5. Scope and Deliverables

5.1 In Scope for Primary Assessment

The primary scope of the Services procured as a result of this RFP will encompass an Information Technology Risk Assessment of:

1. New York State Office of Information Technology Services (ITS) including ITS:
    - ITS datacenters: two (2) central datacenters and one (1) disaster recovery site
    - Nine (9) ITS Clusters practices and environments

5.2 Out of Scope for Primary Assessment

1. Detailed review of ITS customer agencies, practices and environments not managed by ITS
2. Review of systems, practices, and environments not managed by ITS, agencies, or 3rd parties
3. Non-ITS agencies.

5.3 Deliverables

All deliverables listed in this section must be addressed but ITS reserves the right to cancel completion of any individual deliverable. Whether or not the project ultimately delivers any or every deliverable listed is entirely at the discretion of ITS. With the exception of 5.3.3, the deliverables shall encompass both bullets in Section 5.1.1.

Each of the following deliverables will result in a written report to ITS following the Report Issuance Process listed below.

Report issuance process:

1) Completion and issuance of a first draft
2) 2 week comment period
3) A spreadsheet that lists all comments and the disposition of each
4) At the discretion of ITS, a 2nd round of review and comment
5) Final Report issued and presentation given to EISO and other ITS stakeholders as determined at the discretion of the EISO

The Vendor is expected to provide the following key deliverables:

5.3.1 COMPLETE RISK ASSESSMENT BASED ON CYBERSECURITY FRAMEWORK

Complete a risk assessment to measure current practices against alignment with the NIST Critical Infrastructure Cybersecurity Framework Core (hereafter referred to as the Framework). This assessment will include an analysis of core functions based on alignment with the Framework, and known risks inherent to the computing infrastructure (networks, servers, printers, desktops, data storage devices, telephone system and other associated peripheral devices), and systems (commercial off-the-shelf and custom-developed applications). Vendor shall review any available pre-existing documentation provided by ITS, including but not limited to self-assessments such as the National Cyber Security Review (NCSR), ITS Strategic Plan, Enterprise Information Security Office Enterprise Security Strategic Plan, and any available internal and external audits, such as the recent IRS review findings. The Risk Assessment should include but not be limited to the following areas of risk: data center policies, procedures and security controls, secure services and application development and acquisition, privileged user accounts and account access management, and third party risks, privileged user accounts and account management, and 3rd party risks.

5.3.2 COMPLETED COMPLIANCE GAP ANALYSIS

Complete analysis to identify the current state (risk profile) based on the Framework and identify compliance gaps between NYS ITS security policies and standards, and existing practices.
ITS link: http://www.its.ny.gov/eiso

5.3.3 COMPLETED RISK ASSESSMENT OF DATA CENTERS

Complete assessment of data center security policies, practices and controls based on the Framework, NIST publication 800-53, and other applicable State and Federal policies and standards.

5.3.4 COMPLETED PRIVILEGED ACCOUNT RISK ASSESSMENT

Complete assessment of privileged user account management based on samples produced by ITS, and account provisioning in accordance to all State and Federal policies and standards.

5.3.5 COMPLETED CRITICAL APPLICATION RISK ASSESSMENT

Complete assessment of critical applications and databases, as identified by information classification initiative for each cluster.

5.3.6 COMPLETED DATA SHARE PARTNERSHIP RISK ASSESSMENT

Complete assessment of a sampling of data sharing partnership agreements, which may include other State agencies, vendors, local districts and community-based organizations, and chosen selected by ITS.

5.3.7 COMPLETED ACTION PLAN AND RECOMMENDATIONS

Determine and fully document both the current and desired state (profile) based on the Framework and gap analysis. Rank identified risks, create a prioritized action plan, including identifying recommended mitigation strategies:

a) An identification description, prioritization, and categorization of the information security risks in numerical order from high to low, to the enterprise.

i. Classification of risk
ii. Describe each security risk in detail and why it is of concern. Include references to industry risk threat and incident data as appropriate, to help quantify and articulate the risk.
iii. Appendices detailing risks by cluster

b) Actionable mitigation recommendations.
c) Costs associated with addressing these risks where feasible.
d) Final Report issued per below process.

5.4 Acceptance of Deliverables

Each deliverable must be reviewed and accepted in writing by ITS. A signed letter from an authorized ITS representative(s) will serve as the sole methodology utilized in acceptance. No other form(s) of acceptance or approval shall be deemed proof of a deliverable. What is proposed shall be exactly the same as what is delivered unless ITS pre-approves a substitution or modification. A timeframe for deliverables will be agreed upon at/or subsequent to the on-site (to be scheduled) project kick-off meeting. The face-to-face Project Kickoff Meeting shall be held within 15 business days of notice of award unless expressly extended in writing by the ITS.

5.5 Staffing / Scheduling

The Offeror is responsible for proposing a schedule for completing the activities necessary to produce the deliverables described in “Section 5” and the onsite staffing model required to support the proposed schedule. It is expected that the contractor will engage multiple teams to work on multiple deliverables and tasks simultaneously.

ITS requires the following two titles and considers them to be key contractor personnel for purposes of this project:

1) **Project Manager -** Responsible for execution and coordination of certain aspects of the Offeror's project plan and schedule requiring five (5) years' experience with information security projects and current accreditation under PMI PMP, or current accreditation under GIAC GCPM, or current accreditation under ISACA CRISC. The Project Manager, expected to be a full time assignment for the duration of the engagement, will assist the ITS Risk Assessment initiative with a variety of project management activities including, but not limited to, conducting project performance health checks, assisting with project communication, and risk management.

   The Project Manager will also be responsible for assisting ITS coordinate the activities of all personnel deployed by the Offeror on the project.

2) **Technical Writer –** The technical writer is responsible for executing and producing all documentation including but not limited to drafting, editing, integrating graphics and data as well as shepherding content through a formal editorial review process. The technical writer must have three years' experience writing security related technical documentation.

3) **Additional Staffing –** The contractor will be responsible for providing all necessary personnel and subject matter experts, to achieve the deliverables. ITS prefers that all staff have some industry recognized accreditation. At minimum, all assessment teams must have at least one person with current accreditation under ISC² CISSP or the equivalent, such as CRISC, CISA, CISM, GSLC etc. (Also see Section 2.2)

Persons identified for the positions described above are considered key personnel for the project, and ITS requires the Contractor to provide for the continuity of key personnel for the duration of the project. Substitutions for such key personnel cannot be made without ITS approval. Should it become necessary to replace the key staff, the Contractor must provide replacement staff with equal or superior skills and qualifications. ITS shall have the discretion to request that the Contractor remove a staff member from service, if needed. All services shall be performed under the direction of and to the satisfaction of ITS.

ITS reserves the right to adjust the number, mix and duration of the type of any resource secured during the project, the sequence of activities and the schedule of deliverable completion dependent upon the needs of the Risk Assessment Program. In addition, ITS reserves the right to adjust the staffing model dependent upon the needs of the Assessment Program. It is expected, however, that the staffing model will typically deploy eight (8) individual to fifteen (15) staff concurrently.

5.6 Additional Services

5.6.1 PERSONNEL / TITLES

Additional Services shall be work efforts specifically related to the scope of ITS Risk Assessment that was not otherwise specified or proposed and included in the deliverables. Listed below are the 5 titles / categories that will be used for all additional services work efforts under this contract. Each title is followed by a brief description of the tasks generally associated with that title. As described below, the Specialist title will be used for any work effort where the contractor feels that one of the other listed titles is not sufficient.

1) **Project Manager** - Responsible for execution and coordination of certain aspects of the Offeror's project plan and schedule requiring five (5) years' experience with information security projects and current accreditation under PMI PMP, or current accreditation under GIAC GCPM, or current accreditation under ISACA CRISC. The Project Manager, expected to be a full time assignment for the duration of the engagement, will assist the ITS Risk Assessment initiative with a variety of project management activities including, but not limited to, conducting project performance health checks, assisting with project communication, and risk management.

   The Project Manager will also be responsible for assisting ITS coordinate the activities of all personnel deployed by the Offeror on the project.

2) **Technical Writer** – The technical writer is responsible for executing and producing all documentation including but not limited to drafting, editing, integrating graphics and data as well as shepherding content through a formal editorial review process. The technical writer must have three years' experience writing security related technical documentation.

3) **Specialist I** - Any additional resource types bringing specialized skills with between 36-60 months experience, needed by the proposer's approach not described by the two (2) identified resource types, and at minimum has current accreditation under ISC² CISSP or the equivalent, such as CRISC, CISA, CISM, GSLC etc.

4) **Specialist II -** Any additional resource types bringing specialized skills with between 61-84 months experience, needed by the proposer's approach not described by the two (2) identified resource types, and at minimum has current accreditation under ISC² CISSP or the equivalent, such as CRISC, CISA, CISM, GSLC etc..

5) **Specialist III -** Any additional resource types bringing specialized skills with 84+months experience, needed by the proposer's approach not described by the two (2) identified resource types, and at minimum has current accreditation under ISC² CISSP or the equivalent, such as CRISC, CISA, CISM, GSLC etc..

5.6.2 ADDITIONAL SERVICES PROCESS

As stated above, these titles will be used to develop work plans for additional services or deliverables that become evident during the contract term as they relate to the scope of work. Any such additional services shall only be performed when requested and approved in writing by ITS.

When requested, the contractor shall develop a detailed proposed work plan for the accomplishment of the additional service. Work efforts used in the development of such plans shall not be billable. The proposal shall include:

- Step by step process and rationale
- Titles to be used and hours for each
- Cost
- Any anticipated obstacles and proposed solution for them
- Timeline
- Expected outcome

The proposal will be submitted to ITS for review. ITS reserves the right to accept, reject, or request revisions. Work will only commence once a proposal is approved in writing. ITS shall determine if the additional work will be performed as project deliverables or as hourly rate services.

Note: Supplemental equipment and/or software if deemed necessary by ITS, will not be covered under this RFP.

5.7 Travel

ITS staff are primarily located in and around Albany, New York (the Capital District) and the expectation is that onsite work will be completed within ITS offices in the Capital District. Time spent working in the Capital District in Albany will not be considered travel eligible and will not be reimbursed.

The Offeror is responsible for all costs associated with the travel, lodging and maintenance of the staff included in their response for their working onsite at ITS in the Capital District of New York. Only travel from the Capital District of New York (and back) that is identified by ITS as necessary for the successful completion of a specific deliverable or Project Change Request will be reimbursed by New York State. All travel potentially eligible for reimbursement must be pre-approved by ITS in writing.

Pre-approved travel, meals or lodging expenses shall be reimbursed in accordance with the not-to-exceed rates authorized by the NYS Office of the State Comptroller (OSC).

Please refer to the provided link to the OSC web site regarding approved NYS travel rates.

http://www.osc.state.ny.us/agencies/travel/manual.pdf

5.8 Basic Contractor Qualifications and Responsibilities

ITS reserves the right to investigate or inspect at any time whether or not the Services or qualifications offered by the selected Contractor meet the requirements set forth in the RFP. The selected Contractor shall, at all times during the term of the Contract, remain responsible and responsive. The selected Contractor must be prepared, if requested by ITS, to present evidence of experience, ability and financial standing, as well as a statement as to the capacity of the selected Contractor to provide the Services. If ITS determines that the conditions and terms of the Contract are not complied with, or that items or Services proposed to be furnished do not meet the specified requirements, or that the selected Contractor's qualifications or financial standing are not satisfactory, or that performance is untimely, ITS may terminate the Contract. Nothing in the foregoing shall mean or imply that it is obligatory upon ITS to make an investigation either before or after contract award, but should such investigation be made, it in no way relieves the selected Contractor from fulfilling all requirements and conditions of the Contract.

ITS will closely monitor the selected Contractor's ability to respond to work requests as it is essential that work be performed and completed as agreed upon. If the selected Contractor is unable to perform within established timeframes the services of another vendor may be obtained to perform the Project Services at the sole expense of the Contractor.

The selected Contractor shall be solely and completely responsible for the timely accomplishment of all Services set forth in the RFP and the Contract, including but not limited to:

1. Adhering to all of the requirements set forth in the RFP and the Contract and all exhibits and attachments thereto.
2. Maintaining an adequate administrative organizational structure sufficient to discharge its contractual responsibilities. The selected Contractor shall have adequate personnel dedicated to contract administration, supervision and addressing ITS's day to day questions and concerns, including handling emergencies or other administrative issues.
3. Immediately taking into account changes mandated by Federal regulatory agencies and the State due to changes in policies, regulations, statutes, or judicial interpretations.
4. Cooperating fully with any other personnel or contractors that may be engaged by ITS.

Notwithstanding any quantities, volumes or estimates specified in the RFP, ITS does not guarantee any, or any particular volume of, services under the Contract. ITS may, at its sole discretion, withdraw services to be by the selected Contractor.

5.9 Security, Non-Disclosure, Confidentiality and Press Releases

The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Contract. Contractor shall ensure that its personnel, agents, officers and subcontractors, if any are fully aware of the obligations arising under this section and shall take all commercially reasonable steps to ensure compliance. The Contract may be terminated by ITS for cause for a material breach of this section.

A. Security Procedures and Employee Dishonesty:

Contractor will comply fully with all security procedures of ITS communicated to it in the performance of this Contract, including, but not limited to:

New York State Cyber Security Policy P03-002
(http://its.ny.gov/policy/Enterprise_Information_Security_Policy__v4.0.pdf)

and associated standards found in:

Monitoring System Access and Use Standard:

http://www.dhses.ny.gov/ocs/resources/documents/Cyber-Security-Standard-S10-005-V1.1-Monitor-System-Access.pdf

Contractor shall adhere to generally accepted best practices for passwords.

Contractor shall hold ITS harmless from any loss or damage to ITS or the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies or resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, while providing Services under the Contract.

ITS may terminate the Contract if it determines that Contractor has violated a material term of this section. The terms of this section shall apply equally to Contractor, officers, agents, employees, and subcontractors, if any. Contractor agrees that all officers, agents, employees, and subcontractors, if any, shall be made aware of and shall agree to the terms of this section.

Background Checks:

Contractor shall or will have performed within the past year background checks and make suitability determinations on employees and subcontractors who will perform Services under the resulting contract or may potentially access NYS\ITS data under the resulting Contract or will have access to "Confidential Information". For purposes of this Section, a "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the Services under the resulting Contract without undue risk to the interests of the State.

The Contractor is responsible, at its own expense, for completing background checks and making suitability determinations on each employee or subcontractor before the individual begins to perform Services under this Contract. Contractor is required to maintain records of background checks and suitability determinations as required pursuant to Section 10 of Appendix A, and to make them available to ITS when requested.

At a minimum, the background check and suitability determination must include an evaluation of:

1. Law enforcement checks (Federal, State, and Local for the past five [5] years), including DMV driving records, if the position includes driving responsibilities;
2. Social Security Number verification;
3. Verification of U.S. citizenship or legal resident status;
4. Employment history (past five [5] years);
5. Education history;
6. References; and
7. Residence (past five [5] years).

Unless prohibited by law, the Contractor shall, in making a suitability determination, consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the State:

1. Any loyalty or terrorism issue;
2. Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, un-employability for negligence or misconduct, criminal conduct);
3. Dishonorable military discharge;
4. Felony and misdemeanor offenses;
5. Drug manufacturing/trafficking/sale;
6. Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury; larceny);
7. Criminal sexual misconduct;
8. Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);
9. Illegal use of firearms/explosives; and
10. Employment related misconduct involving dishonesty, criminal or violent behavior.

The Contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:

1. The nature, extent and seriousness of the conduct;
2. The circumstances surrounding the conduct;
3. The frequency of the conduct;
4. How recently the conduct occurred;
5. The individual's age and maturity at the time of the conduct;
6. The presence or absence of rehabilitation and other pertinent behavior changes;
7. The potential for pressure, coercion, exploitation, or duress;
8. The likelihood of continuation of the conduct;
9. How, and if, the conduct bears upon potential job responsibilities; and
10. The individual's employment history before and after the conduct.

B. Nondisclosure and Confidentiality

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors, if any have access. This representation shall survive termination of the Contract. For purposes of the Contract, all State information of which Contractor, its officers, agents, employees, and subcontractors, if any becomes aware during the course of performing Services for ITS shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

1. Information that is previously rightfully known to the receiving party without restriction on disclosure;

2. Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and

3. Information that is independently developed by Contractor without use of Confidential Information of the State.

Contractor shall hold the State harmless, without limitation, from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

In addition to the above, Contractor its officers, agents, employees, and subcontractors agree to cooperate with ITS or any other State Agency receiving services under a Contract resulting from this RFP, to execute, if required, a separate Non-Disclosure Agreement in a format acceptable to the State.

C. Press Releases

Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without the prior written approval by the ITS Director or his or her designee, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

D. Public Information

Disclosure of information related to this Procurement and the Contract(s) shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Article 6 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this Procurement that are exempt from disclosure. Information constituting trade secrets or critical infrastructure information for purposes of FOIL, must be clearly marked and identified as such by the Contractor upon submission. If the Contractor intends to seek an exemption from disclosure of claimed trade secret materials or claimed critical infrastructure information under FOIL, the Contractor shall at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of the Public Officers Law. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

E. Federal or State Requirements

In the event that it becomes necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from ITS when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain any Confidential Information which Federal or State statute or regulation prohibits from disclosure after termination of the Contract.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use of disclosure of that Confidential Information. If Contactor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify ITS accordingly. Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which Federal or State statute or regulation prohibits from disclosure.

Contractor agrees that it shall immediately report to ITS the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any New York State agency information directly to that New York State agency. ITS may terminate the Contract if it determines that Contractor has violated a material term of this section. The terms of this section shall apply equally to Contractor, its officers, agents, employees, and subcontractors, if any. Contractor agrees that all officers, agents, employees, and subcontractors, if any, shall be made aware of and shall agree to the terms of this section.

End of Scope and Deliverables Section

6. Contract Clauses and Requirements

6.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein. The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A - Standard Clauses For New York State Contracts
2. Contract Agreement
3. Contract Appendix B - ITS RFP Number 1819 (This Document) Including any addendum(s)
4. Contract Appendix C - Selected Contractor's Proposal

6.2 Procurement Lobbying Requirement

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between ITS/OGS and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by ITS/OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. ITS/OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html

6.3 Information Security Breach

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with ITS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any private information (as defined in the ISBNA) received by or on behalf of ITS under this Contract.

Contractor shall supply ITS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as ITS's notification policy.

If applicable, Contractor must encrypt any database fields and back-up tapes that contain private data elements, as set forth in the ISBNA. Contractor must ensure that private data elements are encrypted in transit to / from their systems.

In general, contractor must ensure that private data elements are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.

Contractor must monitor for breaches of security to any of its systems that store or process private data owned by ITS.

Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from ITS.

In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify ITS and commence an investigation in cooperation with ITS to determine the scope of the breach.

Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.

Contractor shall immediately notify ITS following the discovery that ITS's system security has been breached.

Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from ITS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the Office of Information Technology Services, the Department of State, the Attorney General's Office or any consumer reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.

Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.

This policy and procedure shall not impair the ability of the Attorney General to bring an action against the Contractor to enforce all provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA.

6.4 Confidentiality

Contractor agrees to keep confidential and not to disclose to third parties any information provided by the ITS or learned by the Contractor during the performance of the Contract unless Contractor has received the prior written consent of the ITS to make such disclosure. This provision shall survive the expiration and termination of this Contract. The Contractor warrants that all of its operations are compliant with all federal, state and local laws, rules and regulations pertain to the privacy and/or security of personal and confidential information. Contractor may be required to complete additional security and confidentiality agreements as required by specific State Agencies and/or Clusters.

6.5 Ethics Compliance

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

6.6 Contractor Insurance Requirements

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"), Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements contained in this Section. Such Certificates shall be of a form and substance acceptable to OGS.

Certificate acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State and acceptable to OGS; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to Office of General Services, Purchasing Unit, Corning Tower, 40th Floor, Empire State Plaza, Albany, New York 12242 and shall name The People of the State of New York, its officers, agents, and employees as additional insureds there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 10 11 85**). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by OGS. Such approval shall not be unreasonably withheld.

The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report. If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least “A-” Class ”VII” in the most recently published Best’s Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply to OGS updated replacement Certificates of Insurance, and amendatory endorsements.

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

a) Commercial General Liability Insurance with a limit of not less than $5,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

   1. If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.

b) Comprehensive Business Automobile Liability Insurance with a limit of not less than $2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

c) Cyber Liability Insurance with a limit of not less than $5,000,000 each occurrence with respects to the Contractor’s risk assessment on New York State’s Information Technology service operations. The policy must designate the Contractor as Named Insured and the People of the State of New York and the Office of General Services and each of their commissioners, officers, agents, employees, successors and assigns, as additional insured on a primary and non-contributory basis.

   The Cyber Liability policy must include, at a minimum, coverage for:

   - security and privacy liability,
   - media and intellectual property liability,
   - professional liability,
   - privacy regulatory defense and penalties,
   - event management costs,
   - notification and monitoring expenses,
   - third party electronic theft and computer fraud,
   - network interruption and recovery,

d) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than $5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against OGS arising from Contractors work.

   1. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended

discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.

2. If the Contract includes disposal of materials from the job site, the Contractor must furnish to OGS, evidence of pollution legal liability insurance in the amount of $2,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under this Contract.

   i) If autos are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

e) If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than $5,000,000 per loss.

1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.

2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.

f) Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

g) WORKERS' COMPENSATION / DISABILITY INSURANCE:

Workers' Compensation, Employer's Liability, and Disability Benefits meeting all New York State statutory requirements are required. If coverage is obtained from an insurance company through an insurance policy, the policy shall provide coverage for all states of operation that apply to the performance of the contract. In addition, if employees will be working on, near or over navigable waters, coverage provided under the US Longshore and Harbor Workers' Compensation Act must be included. Also, if the contract is for temporary services, or involves renting equipment with operators, the Alternate Employer Endorsement, WC 00 03 01A, must be included on the policy naming the People of the State of New York as the alternate employer.

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS:

ACORD forms are **NOT** acceptable proof of workers' compensation coverage.

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, contractors shall:

A) Be legally exempt from obtaining workers' compensation insurance coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Office of General Services** at the time of bid submission or shortly after the opening of bids:

A) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us);

or

B) *Certificate of Workers' Compensation Insurance:*

1) **Form C-105.2 (9/07)** if coverage is provided by the contractor's insurance carrier, **contractor must request its carrier** to send this form to the New York State Office of General Services;

or

2) **Form U-26.3** if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services;

or

C) *Certificate of Workers' Compensation Self-Insurance* **- Form SI-12**, available from the New York State Workers' Compensation Board's Self-Insurance Office;

or

D) Certificate of Participation in Workers' Compensation Group Self-Insurance **Form GSI-105.2**, available from the contractor's Group Self-Insurance Administrator.

PROOF OF COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:

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

A) Be legally exempt from obtaining disability benefits coverage;

or

B) Obtain such coverage from insurance carriers;

or

C) Be a Board-approved self-insured employer.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Office of General Services** at the time of bid submission or shortly after the opening of bids:

A) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us);

or

B) **Form DB-120.1**, *Certificate of Disability Benefits Insurance.* Contractor must request its business insurance carrier to send this form to the New York State Office of General Services;

or

C) **Form DB-155**, *Certificate of Disability Benefits Self-Insurance.* The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

All forms must name the Office of General Services – Financial Administration, 32nd Floor, Mayor Erastus Corning 2nd Tower, Empire State Plaza, Albany NY 12242, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OGS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OGS' immediate termination of any contract resulting

from this RFP, subject only to a five (5) business day cure period. Any termination by OGS under this section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

6.7 Tax and Finance Clause

TAX LAW § 5-A:

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

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

Contractor certification forms and instructions for completing the forms are attached to this RFP. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

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

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

6.8 M/WBE & EEO Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

POLICY STATEMENT

The New York State Office of General Services (OGS), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation in the performance of State contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("the Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting verses the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of

these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program.

Equal Employment Opportunity Requirements

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

Proposer further agrees to submit with the bid a staffing plan (Form EEO 100) identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit to the Authorized User, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

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

Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (MWBE)

For purposes of this procurement, ITS/OGS hereby establishes a total contract MWBE goal of 20%. A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this contract and Contractor agrees that ITS/OGS may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: http://www.esd.ny.gov/MWBE.html

For guidance on how ITS/OGS will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Bidder/Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and ITS/OGS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, Bidder/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

A. Proposers are required to submit a Utilization Plan on Form MWBE 100 with their bid or proposal. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State contract and a description of the Contract scope of work that the Contractor intends to structure to meet the goals 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 that the Contractor intends to be performed by a NYS Certified minority- or woman-owned business. Any modifications or changes to the agreed participation by NYS Certified M/WBEs after the Contract Award and during the term of the Contract must be reported on a revised M/WBE Utilization Plan and submitted to ITS/OGS.
B. ITS/OGS will review the submitted MWBE Utilization Plan and advise the Bidder of ITS/OGS acceptance or issue a notice of deficiency within 20 days of receipt.

C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to ITS/OGS, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ITS/OGS to be inadequate, ITS/OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. ITS/OGS may disqualify a Bidder as being non-responsive under the following circumstances:

a) If a Bidder fails to submit a MWBE Utilization Plan;

b) If a Bidder fails to submit a written remedy to a notice of deficiency;

c) If a Bidder fails to submit a request for waiver; or

d) If ITS/OGS determines that the Bidder has failed to document good faith efforts.

A Bidder who documents good faith efforts to meet the goal requirements may submit a request for a partial or total waiver on Form BDC 333, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by ITS/OGS at that time, the provisions of clauses B-D above, will apply.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ITS/OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Monthly Compliance & Payment Report on Form MWBE 102 to ITS/OGS, by the 10th day of each month during the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

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.

ALL FORMS ARE AVAILABLE AT: http://www.ogs.ny.gov/MWBE/Forms.asp

6.9 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid will be held in confidence and details of any bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should you feel your firm's bid contains any such trade secrets or other confidential or proprietary information, **you must submit a request to except such information from disclosure.** Such request must be in writing, must state the reasons why the information should be excepted from disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the entire contents of a bid from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.

6.10 General Requirements

- The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.
- The Bidder agrees to notify the State of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The Bidder agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.

- The Bidder agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the State.
- For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
- For purposes of any contract resulting from this RFP, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
- ITS's interpretation of specifications shall be final and binding upon the Contractor.
- The State will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
- Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with ITS.
- INSPECTION – For purposes of any contract resulting from this RFP the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, ITS may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.
- STOP WORK ORDER – ITS reserves the right to stop the work covered by this RFP and any contract(s) resulting there from at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, ITS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Bidder shall be liable to the State of New York for any such costs on account thereof. In the event that ITS issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective. Provided, however, that if an emergency situation exists, as reasonably determined by ITS, then the stop work order shall be effective immediately.
- It is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
- ITS reserves the right to reject and bar from the facility any employee hired by the Contractor.

6.11 Contract Terms

All provisions and requirements of Appendix A Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this RFP, and will be binding upon the parties to such contract.

All provisions and requirements, which are attached hereto and form a part hereof, will be incorporated into any contract resulting from this RFP, and will be binding upon the parties to such contract.

It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this RFP.

Any contract resulting from this RFP shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York.

6.12 Subcontractors

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. When bidding, any known / planned use of subcontractors must be disclosed in detail with bid submission. If subcontractors are to be used, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups

will be allowed. The total of all Subcontractor work during the term of the Contract, exclusive of M/WBE subcontracted work as established in the approved utilization plan, shall not exceed 15% of the total contract value.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this RFP or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this RFP.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the Director of Office of Information Technology Services, Empire State Plaza, PO Box 2062, Albany, NY 12220-0062 in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as the Assistant to the Director may require concerning the proposed subcontractor's ability and qualifications.

6.13 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all proposals received in response to this Solicitation.
2. Disqualify a Proposer from receiving the award if the Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Proposers' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Proposer.
4. Adjust any Proposer's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Proposer will cause the State to incur additional costs.
5. Utilize any and all ideas submitted in the proposals received.
6. Negotiate with Proposers responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.
7. Begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected Contractor within 21 days of selection notification.
8. Waive any non-material requirement not met by all Proposers.
9. Not make an award from this Solicitation.
10. Make an award under this Solicitation in whole or in part.
11. Make multiple contract awards pursuant to the Solicitation.
12. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
13. Seek clarifications of proposals.
14. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB/RFP.
15. Prior to the bid opening, amend the IFB/RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
16. Waive any requirements that are not material.
17. If two or more bids are found to be substantially equivalent, the Commissioner of OGS, at their sole discretion, will determine award using the pre-established process. For best value procurements, cost will be the determining factor.

Please Note: The State is not liable for any cost incurred by a Proposer in the preparation and production of a proposal or for any work performed prior to the issuance of a contract.

6.14 Extent of Services

ITS reserves the right to re-negotiate at its discretion, to reduce the amount of services provided under any contract resulting from this solicitation. This reduction in services shall be effectuated by written amendment to the contract and subject to approval by the Office of the State Comptroller.

6.15 Debriefings

Proposers will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to contract award, ITS/OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's bid or bid. After contract award, ITS/OGS shall, upon request, provide a debriefing to any bidder that responded to the RFP, regarding the reason that the bid or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of contract approval as posted on the OSC website (web address below).

http://wwe1.osc.state.ny.us/transparency/contracts/contractsearch.cfm

6.16 Termination

Termination

ITS may, upon thirty (30) days notice, terminate the contract resulting from this RFP in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, ITS may also terminate any contract resulting from this RFP upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of the creditors.

Furthermore, ITS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this RFP, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the Contractor.

Any termination by ITS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this RFP and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

Procurement Lobbying Termination

The ITS/OGS reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, ITS may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

6.17 NYS Vendor Responsibility Questionnaire For-Profit Business Entity (Questionnaire)

OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at https://portal.osc.state.ny.us.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at http://www.osc.state.ny.us/portal/contactbuss.htm. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Bidder prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

6.18 New York State Vendor File Registration

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York. If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor ID number on the Contractor Information page included in Appendix B of this solicitation.
If the Bidder is not currently registered in the Vendor File and is recommended for award, OGS shall request completion of OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. For more information on the vendor file please visit the following website: http://www.osc.state.ny.us/vendor_administration
Form to be completed: http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf

6.19 Extension of Use

Any contract resulting from the solicitation may be extended to additional State Agencies upon mutual agreement between the requesting agency, OGS/ITS, and the contractor, and subject to applicable approvals. OGS/ITS reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

6.20 Assignment or Transfer of Contract

OGS/ITS may transfer/assign the Contract resulting from this RFP to another state agency at its sole discretion by informing Contractor in writing of such a transfer.

6.21 Indemnification

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

6.22 Force Majeure

Neither party hereto will be liable for losses, defaults, or damages under any contract resulting from this solicitation which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this solicitation, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

6.23 Ownership/Title to Deliverables

Unless otherwise specified in the Contract, all materials developed pursuant to the terms of the Contract without limitation, including materials developed as a result of Task Orders, contract documentation, software coding or modifications and all other Deliverables of whatever description, custom program code developed or prepared for the State by the Contractor under the Contract, whether or not the Contract is completed, is confidential information and the property of the State and all title and interest therein shall vest in the State and shall be deemed to be a "work made for hire" and made in the course of the services rendered hereunder. To the extent that title to any such works may not, by operation of law, vest in the State, or such works may not be considered works made for hire, all rights, title and interest therein are hereby irrevocably assigned to the State. All such materials shall belong exclusively to the State, with the State having the right to obtain and to hold in its own name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Contractor agrees to give the State, and any person designated by the State, reasonable assistance, at the State's expense, required to perfect the rights defined in this Paragraph.

Notwithstanding the foregoing, the Contractor or third parties shall retain all right, title and interest in any of their respective pre-existing software products. The State acknowledges that the successful Bidder or its licensors shall retain all ownership and intellectual property rights to the proprietary code offered to the State under a licensing agreement. Any property or material furnished or provided by the State to the Contractor hereunder is and will remain the property of the State.

Nothing herein shall preclude the State from entering into an agreement with the Contractor to jointly own a specific work developed under the Contract.

6.24 Encouraging use of New State Business in Contract Performance

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

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

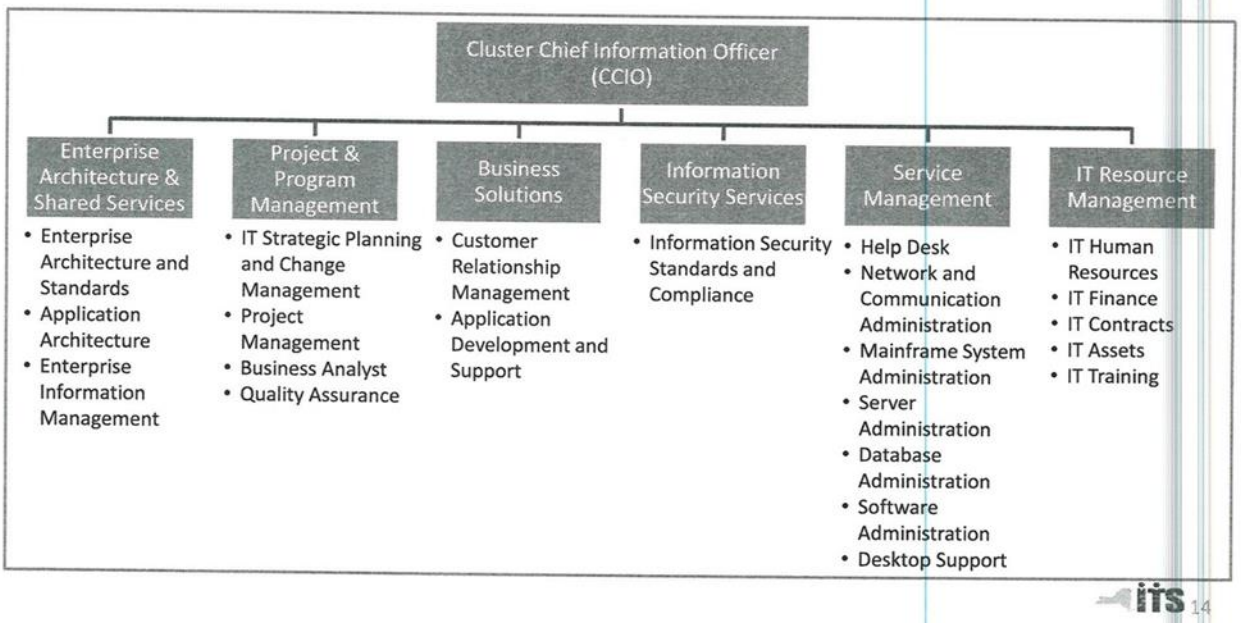
Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's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

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects vendors/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

End Contract Clauses and Requirements Section

Exhibit A

Functional Organization



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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). 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.

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 the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency 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 is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have

understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in 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. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or

political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

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

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

IFB Appendix B

Required Forms

INVITATION FOR BIDS (IFB) 1819 SOLICITED BY THE

NEW YORK STATE OFFICE OF GENERAL SERVICES

ON BEHALF OF THE

NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES

FOR

INFORMATION TECHNOLOGY RISK ASSESSMENT SERVICES

Administrative Proposal

The following required forms are to be submitted with the proposer's proposal. The forms include:

- Contractor Information Page
- Corporate Acknowledgement (must be notarized)
- Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law
- Offerer Disclosure of Prior Non-Responsibility Determinations;
- Offerer's Certification of Compliance with State Finance Law §139-k(5)
- ST-220 -TD Taxation & finance Contractor Certification (Submit directly to Taxation & Finance)
- ST-220 -CA Taxation and Finance Covered Agency Certification
- MacBride Principles
- Non/Collusive Bidding Certification
- Diesel Emission Reduction Act
- Small Business Enterprise Certification
- Consultant Contractor Forms A & B
- Important Links to: EEO Staffing Plan, MWBE 100, NYS Vendor File and Vendor Responsibility Questionnaire

Contractor Information

SOLICITATION NUMBER 1891

_____ _____

(Authorized Signature) (Date)

_____ _____

(Print Name) (Title)

_____ _____

(Company Name) (Federal I.D. Number)

_____

(NYS Vendor I.D. Number)

_____

(Address)

_____

(City, State, Zip)

_____

(County)

_____Ext. _____ _____Ext._____

(Telephone Number) (Toll Free Phone)

_____ _____

(Fax Number) (Toll Free Fax Number)

_____

(E-mail)

New York State Small Business as defined in Executive Law Section 310(20) and as detailed in the "New York State Required Certifications" included in Appendix B herein.	Circle One:	Yes	No
New York State Certified Minority Owned Business	Circle One:	Yes	No
New York State Certified Women Owned Business	Circle One:	Yes	No

Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State?	Circle One:	Yes	No
Will New York State Businesses be used in the performance of this contract?	Circle One:	Yes	No
If yes, identify New York State Business(es) that will be used;	(Attach identifying information).		
Does your proposal meet all the requirements of this solicitation?	Circle One:	Yes	No

CONTRACTOR INFORMATION ACKNOWLEDGEMENT

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF **}**

: ss.:

COUNTY OF **}**

On the _____ day of _____ in the year 20_____, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____.

Town of _____, County of _____, State of _____, and further that:

[Check One]

(☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.

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

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

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

_____

Notary Public

Registration No._____State of:_____

Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)

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

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

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

By: _____ Date:_____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

_____

_____

Offerer Disclosure of Prior

Non-Responsibility Determinations

Background:

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

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

Instructions:

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

Offerer Disclosure of Prior Non-Responsibility Determinations

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

Address: _____
_____

Name and Title of Person Submitting this Form: _____
_____

Contract Procurement Number: _____ Date: _____

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

No ___ Yes ___

If yes, please answer the next questions:

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

No ___ Yes ___

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

No ___ Yes ___

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

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

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?
(Please check):
No ___ Yes __

6. If yes, please provide details below.
Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By:_____ Date:_____
Signature

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

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

Offerer Certification:

I certify that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date:_____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address:

_____

_____

_____

Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

New York State Department of Taxation and Finance

Contractor Certification (ST-220-TD)

(Bidder - Please submit directly to Taxation & Finance)

Contractor Certification to Covered Agency (ST-220-CA)

ST-220-TD(6/06)

New York State Department of Taxation and Finance

Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a (see Need help? below)*.

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)			

Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )

Covered agency name	Contract number or description	Estimated contract value over the full term of the contract (but not including renewals) $
Covered agency address		Covered agency telephone number

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than $100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006),* available at *www.nystax.gov*. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need Help?

Internet access: *www.nystax.gov*
(for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(*name*) (*title*)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Make only one entry in each section below.

Section 1 - Contractor registration status

☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.

☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 - Affiliate registration status

☐ The contractor does not have any affiliates.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 - Subcontractor registration status

☐ The contractor does not have any subcontractors.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this_____ day of _____, 20 ____

_____ _____
(sign before a notary public) *(title)*

Schedule A - Listing of each person (contractor, affiliate, or subcontractor) exceeding $300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such person exceeded the $300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration In Progress

Column A - Enter ***C*** in column A if the contractor; ***A*** if an affiliate of the contractor; or ***S*** if a subcontractor.

Column B - Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If person is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.

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

Column D - ID number - Enter the federal employer identification number (EIN) assigned to the person or person's business, as applicable. If the person is an individual, enter the social security number of that person.

Column E - Sales tax ID number - Enter only if different from federal EIN in column D.

Column F - If applicable, enter an X if the person has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

ST-220-TD (6/06)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the _____ day of _____ in the year 20___, before me personally appeared _____ known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

[Mark an ***X*** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

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

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

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

_____

Notary Public

Registration No._____State of:_____

ST-220-CA
(6/06)

New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Question and Answers Concerning Tax Law Section 5-a (see Need Help? on back)*.

Contractor name				*For covered agency use only Contract number or description*
Contractor's principal place of business	City	State	ZIP code	
Contractor's mailing address *(if different than above)*				*Estimated contract value over the full term of contract (but not including renewals)*
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)			$
Contractor's telephone number ( )	Covered agency name			
Covered agency address				*Covered agency telephone number*

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(*name*) (*title*)
of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:
(Mark an X *in only one box)*

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)
and, to the best of the contractor's knowledge, the information provided on that previously filed Form T-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this_____ day of _____, 20 ____

_____ _____
(sign before a notary public) *(title)*

Instructions

General Information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency,* with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

ST-220-CA (6/06)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the day _____ of _____ in the year 20___, before me personally appeared _____ known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

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

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

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

_____
Notary Public

Registration No._____

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need Help?

Internet access: *www.nystax.gov*
(for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

NYS Required Certifications

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either (answer yes or no to one or both of the following, as applicable):

1. have business operations in Northern Ireland No ☐ Yes ☐ , and if yes:

2. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.

NON-COLLUSIVE BIDDING CERTIFICATION

In accordance with Section 139-d of the State Finance Law, by submitting its bid each bidder and each person signing on behalf of any other bidder certifies, 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 his or her knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.

2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.

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

In the event that the Bidder is unable to certify as stated above, the Bidder shall provide a signed statement which sets forth in detail the reasons why the Bidder is unable to furnish the certificate as required in accordance with State Finance law §139-d(1)(b).

DIESEL EMISSION REDUCTION ACT

Pursuant to N.Y. Environmental Conservation Law §19-0323 of the ("the Law") it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by Law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.

SMALL BUSINESS CERTIFICATION

In accordance with New York State Finance Law, Section 163(j), the contractor certifies that it:

1. __ IS NOT a Small Business as defined in New York State Executive Law Section 310(20).

2. __ IS a Small Business as defined in New York State Executive Law Section 310(20).

"Small business" shall mean a business which:

A. has a significant business presence in New York demonstrated through one of the following:
   1. pays taxes in New York State, or
   2. purchases New York State products or materials, or
   3. has any payroll in New York State
B. is independently owned and operated;
C. not dominant in its field; and,
D. employs less than three hundred persons.

By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Certifications document and that all information provided is complete, true and accurate.

Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Bidder's Signature: Title:	Printed or Typed Name: Date:

EMPLOYEE INFORMATION TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS

Instructions for Completing Form A and B

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

Form A - Contractor's Planned Employment (to be completed and submitted with bid/quote)

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

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

- **Number of Employees:** enter the total number of employees in the employment category to be employed to provide services under the contract including part time employees and employees of subcontractors.
- **Number of hours:** enter the total number of hours to be worked by the employees in the employment category.
- **Amount Payable under the Contract:** enter the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category.

Form B – Contractor's Annual Employment Report. (to be completed by May 1st of each year for each consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the Department of Civil Service, Office of the State Comptroller and Office of General Services)

- **Scope of Contract:** choose a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract.

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

- **Number of Employees:** enter the total number of employees in the employment category employed to provide services under the contract during the report period, including part time employees and employees of subcontractors.
- **Number of hours:** enter the total number of hours worked during the report period by the employees in the employment category.
- **Amount Payable under the Contract:** enter the total amount paid by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the report period.

OSC Use Only:
Reporting Code:
Category Code:
Date Contract Approved:

FORM A

State Consultant Services - Contractor's Planned Employment From Contract Start Date Through The End Of The Contract Term

State Agency Name: Agency Code:
Contractor Name: Contract Number:
Contract Start Date: / / Contract End Date: / /

O*Net Employment Category (see O*Net on-line at online.onetcenter.org)	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	$ 0.00
Grand Total			

Name of person who prepared this report:
Title: Phone #:
Preparer's Signature:
Date Prepared: / /
(Use additional pages, if necessary) Page of

FORM B

OSC Use Only:
Reporting Code:
Category Code:

State Consultant Services
Contractor's Annual Employment Report
Report Period: April 1, to March 31,

Contracting State Agency Name: Agency Code:
Contract Number:
Contract Term: / / to / /
Contractor Name:
Contractor Address:
Description of Services Being Provided:

Scope of Contract (Choose one that best fits):
Analysis ☐ Evaluation ☐ Research ☐ Training ☐
Data Processing ☐ Computer Programming ☐ Other IT consulting ☐
Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐
Health Services ☐ Mental Health Services ☐
Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☐

O*Net Employment Category (see O*Net on-line at online.onetcenter.org)	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	$ 0.00
Grand Total			

Name of person who prepared this report:
Preparer's Signature:_____
Title: Phone #:
Date Prepared: / /

Use additional pages if necessary) Page of

Important Links

Link to EEO 100 Staffing Plan and MWBE 100: http://www.ogs.ny.gov/MWBE/Forms.asp

Link to the online Vendor Responsibility Questionnaire: http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at https://portal.osc.state.ny.us

If your company is not currently registered with the New York State Vendor File administered by the Office of the State Comptroller (OSC), please visit: (http://www.osc.state.ny.us/vendor_management/) for instructions on how to register.

OGS recommends completing the questionnaire online using the New York State VendRep System. In this case, your company must be assigned a Vendor ID to enroll in the VendRep System. To request assignment of a Vendor ID to access the VendRep System **in advance of submitting your bid,** contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us

Appendix C

Sample Contract

Solicitation No. 1819

SAMPLE

STATE OF NEW YORK
OFFICE OF INFORMATION TECHNOLOGY SERVICES
AGREEMENT FOR
INFORMATION TECHNOLOGY RISK ASSESSMENT SERVICES
WITH
(CONTRACTOR)
CONTRACT # C000XXX

THIS AGREEMENT, made this ____ day of _____, 2014 by and between the People of the State of New York, acting by and through the New York State Office of information Technology Services (ITS), its successors and assigns, with offices located at the Swan Street Building, Empire State Plaza, Albany, NY 12220 (hereinafter "ITS" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at _____.

W I T N E S S E T H:

WHEREAS the NYS Office of Information Technology Services (ITS) was created in accordance with Chapter 55 part n of the laws of 2013, to consolidate IT service delivery to New York State agencies.

WHEREAS, the ITS is responsible for the Information Technology Security Risk Assessment Services at the New York State Office of information Technology Services (hereinafter the "State Office Building") and in fulfilling its responsibility deems it necessary to help identify, assess and prioritize the State's current information security risks, evaluate the State's overall cyber security posture against the National Cyber security Framework, and provide a prioritized plan and recommended strategies to mitigate and manage risk therefore, and

WHEREAS, ITS has determined after having solicited proposals from proposers willing to supply these services, that the Contractor submitted the proposal affording the State the best value for such services and that the Contractor possesses the necessary capacity, experience and expertise for provision of information Technology Risk Assessment, and that Contractor is ready, willing and able to perform such services on the terms hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

SAMPLE

1. CONSIDERATION

ITS shall pay the Contractor for all information technology risk assessment fees and other fees and expenses in accordance with the amounts and rates put forth in the Contractor's proposal attached hereto as Appendix "C", which Appendix C is hereby incorporated by reference and made a part hereof as fully as if set forth as length herein. This contract will be established with a not to exceed value of $_____. Services performed beyond this amount will not be compensated.

As a point of clarification, the contractor shall only be paid for actual work effort performed on each deliverable or portion thereof. There is no guaranteed amount of work associated with this contract.

2. TERM

This Agreement shall commence upon OSC approval and will be in effect for two (2), unless sooner terminated as herein specified.

It is anticipated that the specified deliverables would be completed within the six (6) months of the contract.

3. SERVICES

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Request for Proposals No. 1819, which is annexed as Appendix "B" hereto, and the Contractor's proposal, annexed as Appendix "C" hereto, except as such Appendices B and C have been revised by the terms hereof. Appendix B is hereby incorporated by reference and made a part hereof with the same force and effect as if set forth at length herein.

Contractor acknowledges that ITS is not obligated to purchase all services outlined in Contract Appendix B or Contract Appendix C, and that all statements made by ITS or the state in reference to work that may be performed under this agreement should not be construed as guarantee of work.

4. TERMINATION

This Agreement may be terminated in accordance with the termination provisions set forth in the solicitation attached hereto as Appendix B hereof.

A) Termination

SAMPLE

The Office of General Services may, upon thirty (30) days notice, terminate the contract resulting from this solicitation in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement.
In addition, ITS may also terminate any contract resulting from this solicitation upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of the creditors.

Furthermore, ITS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this solicitation, or any unit portion thereof, with or without cause, by giving thirty (30) days written notice of termination to the Contractor.

Any termination by ITS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

B.) Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

5. RECORDS

The Contractor will maintain accurate records and accounts of services performed and monies expended under this Agreement. Such records will be maintained for six (6) years following the close of the State fiscal year to which they pertain and will be made available to representatives of ITS or the New York State Comptroller, as may be necessary for auditing purposes, upon request.

6. TAXES

The Contractor will be responsible for all applicable Federal, State and Local taxes and all FICA contributions.

7. INDEPENDENT CONTRACTOR

It is understood and agreed that the legal status of the Contractor, its subcontractors, agents, officers and employees is that of an independent contractor and in no manner shall they be deemed employees or agents of the State of New York and, therefore, are not entitled to any of the benefits associated with such employment or designation.

SAMPLE

8. APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

9. ASSIGNMENT

Contractor agrees that it will not assign this Agreement, or any interest therein without the prior written consent of the Commissioner of General Services.

10. LAW

This Agreement shall be governed by the laws of the State of New York.

11. CONDITIONS PRECEDENT

This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the State Comptroller.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

13. EXECUTORY CLAUSE

This Agreement shall be deemed executory only to the extent of money available to the State for performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for purposes thereof.

14. INCONSISTENCIES

In the event of any discrepancy, disagreement or ambiguity between this contract agreement and Appendix B "Solicitation" and/or Appendix C "Proposal", or between any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

(i) Appendix A, January 2014
(ii) This contract agreement
(iii) Appendix B – Solicitation #1819 including Addenda

SAMPLE

(iv) Appendix C – Contractor's Proposal

The parties understand and agree that any and all deviations or exceptions taken by Contractor to the State's Request for Proposal are hereby withdrawn except only to the extent that such exceptions or deviations have been explicitly incorporated into this contract agreement.

15. FORCE MAJEURE

Neither party hereto will be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

16. ASSIGNMENT BY STATE

The State agrees not to assign this Agreement without prior notice to and reasonable consent of the Contractor provided, however, that this Agreement may be assigned without such consent to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of ITS as an agency are transferred to a successor agency or subdivision of the State.

17. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, overnight carrier or hand delivered, (i) if to the State, addressed to the State at its address set forth above, and (ii) if to Contractor, addressed to Contractor at its address set forth above. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for the purposes of this Agreement.

18. CAPTIONS

The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

19. SEVERABILITY

SAMPLE

In the event that any one or more of the provisions of this Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

20. IRAN DIVESTMENT ACT

By entering into this Contract, Contractor certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: http://www.ogs.ny.gov/about/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. 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 the Contract will be required to certify that it is not on the Prohibited Entities List before OGS may approve a request for Assignment of Contract.

During the term of the Contract, should ITS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, ITS 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 ITS shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

ITS reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

21. INFORMATION SECURITY BREACH

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with ITS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any private information (as defined in the ISBNA) received by or on behalf of ITS under this Agreement.

- Contractor shall supply ITS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as ITS's notification policy.

- Contractor must encrypt any database fields and backup tapes that contain private data elements, as set forth in the ISBNA.

SAMPLE

- Contractor must ensure that private data elements are encrypted in transit to / from their systems.
- In general, contractor must ensure that private data elements are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.

- Contractor must monitor for breaches of security to any of its systems that store or process private data owned by ITS.

- Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from ITS.

- In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify ITS and commence an investigation in cooperation with ITS to determine the scope of the breach.

- Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.

- Contractor shall immediately notify ITS following the discovery that ITS's system security has been breached.

- Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from ITS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.

- Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.

- This policy and procedure shall not impair the ability of the Attorney General to bring an action against the Contractor to enforce all provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA.

22. <u>MWBE/EEO</u>

I. General Provisions

SAMPLE

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State Certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

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

II. Contract Goals

a) OGS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract.

b) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: https://ny.newnycontracts.com/frontend/diversityusers.asp.

Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

c) Pursuant to 5 NYCRR § 142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and ensure that the MWBEs utilized under the Contract perform commercially useful functions. Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a

SAMPLE

commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

(1) the amount of work subcontracted;
(2) industry practices;
(3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
(4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
(5) any other relevant factors.

d) In accordance with Executive Law Section 316-aand 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

A. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO 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.

2. The Contractor certifies by entering into this Contract that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof is Contractor's equal employment opportunity policy.

B. Form EEO 100 - Staffing Plan.

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall

SAMPLE

complete the Staffing plan form and submit it as part of their contract.

C. Form EEO 102 - Workforce Employment Utilization Report ("Workforce Report") Contractor agrees it is responsible for updating and providing notice to the OGS of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

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

IV. MWBE Utilization Plan

A. Contractor certifies that it has submitted a MWBE Utilization Plan on Form MWBE 100 to OGS and will follow such Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix.

B. Contractor further certifies that the MWBEs included in its Utilization Plan will perform commercially useful functions under the Contract. Contractor understands that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Contractor further understands and agrees that MWBEs that do not perform commercially useful functions may not be counted as meeting the MWBE goals of this Contract.

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

V. Waivers

A. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form (BDC 333) documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

B. If the OGS, upon review of the MWBE Utilization Plan and updated Quarterly Workforce Reports determines that Contractor is failing or refusing to comply with the Contract

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goals and no waiver has been issued in regards to such non-compliance, the OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Monthly MWBE Contractor Compliance Report

A. Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (NYSCS) to report subcontractor and supplier payments made by Contractor to MWBEs performing commercially useful functions under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

B. When a Contractor receives a payment from a State Agency Authorized User following a purchase from an OGS contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an e-mail or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **"Introduction to the System for Vendors"** and "**Contract Compliance Reporting - Vendor Training"** to become familiar with the NYSCS. To view the training schedule and to register visit: https://ny.newnycontracts.com/events.asp

D. As soon as possible after the Contract is approved, Contractor should visit https://ny.newnycontracts.com and click on **"Account Lookup"** to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing **"Change Info."** It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through **"Request New User."** When identifying the person responsible, please add **"- MWBE Contact"** after their last name (i.e John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted

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for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in Section VII below.

VII. Liquidated Damages - MWBE Participation

A. Where OGS 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 the OGS liquidated damages.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:
   1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
   2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

ALL FORMS ARE AVAILABLE AT: http://www.ogs.ny.gov/MWBE/Forms.asp

23. <u>CONTRACTOR RESPONSIBILITY</u>

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of ITS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of ITS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers

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information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of ITS or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

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CONTRACT NO. C00XXXX

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Agency Certification
"In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

(**Company Name**)

By:_____
Name:
Title:
Federal I.D. No.:
Date:

THE PEOPLE OF THE STATE OF NEW YORK

By:_____
Name:
Title:
Date:

APPROVED AS TO FORM
Eric Schneiderman
Attorney General

APPROVED
Thomas P. DiNapoli
State Comptroller

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INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }

: SS.:

COUNTY OF }

On the ____ day of _____ in the year 20 __ , before me personally appeared _____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____,

Town of _____ ,

County of _____ , State of _____ ; and further that:

[Check One]

(☐ If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

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

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

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

_____

Notary Public

Registration No._____ **State of:_____**

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Attachment 1 - Cost Proposal Form

Vendor: _____

Section 1

Note: Personal are included in fixed cost deliverables.

RFP Section	**Fixed Cost Deliverables**	**Amount**
5.3.1	COMPLETE RISK ASSESSMENT BASED ON CYBERSECURITY FRAMEWORK	$ -
5.3.2	COMPLETED COMPLIANCE GAP ANALYSIS	$ -
5.3.3	COMPLETED RISK ASSESSMENT OF DATA CENTERS	$ -
5.3.4	COMPLETED PRIVILEGED ACCOUNT RISK ASSESSMENT	$ -
5.3.5	COMPLETED CRITICAL APPLICATION RISK ASSESSMENT	$ -
5.3.6	COMPLETED DATA SHARE PARTNERSHIP RISK ASSESSMENT	$ -
5.3.7	COMPLETED ACTION PLAN AND RECOMMENDATIONS	$ -
	1. Fixed Cost Deliverables Total=	**$ -**

Section 2

Note: Hourly rates are for additional services only.

Additional Services / Personnel	**Hourly Rate Each Title**	**Yearly Hours (Provided by ITS)**	**Total**
Project Manager	$ -	200	$ -
Technical Writer	$ -	200	$ -
Specialist I	$ -	200	$ -
Specialist II	$ -	350	$ -
Specialist III	$ -	500	$ -
		1450	*$*
2. Additional Services / Personnel Total Multiplied by 2 years =			$ -

Section 3

3. Total Contract Amount (Section 1 + Section 2)	**$ -**

Attachment 2 - Proposal Submission Checklist

Section	Checklist Item	Check Box	Page # in Submission
Attachment 1	**Cost Proposal Form** - 4 Originals and 1 CD-R *	☐	
	Technical Proposal - 4 Originals, 4 copies and 1 CD-R *	☐	
Attachment 2	Proposal Submission Checklist	☐	
Attachment 3	Formal Offer Letter	☐	
Attachment 4	Proposer Qualification Certification	☐	
Attachment 5	Proposer References	☐	
Attachment 6	Personnel/Titles	☐	
Attachment 7	Confidentiality Form	☐	
Appendix B	**Administrative Proposal** - 4 Originals and 1 CD-R *		
Appendix B	Contractor information Page	☐	
Appendix B	Corporate Acknowledgement (must be notarized)	☐	
Appendix B	Offerer's Affirmation of Understanding of and Agreement pursuant to NYS Finance Law	☐	
Appendix B	Offerer Disclosure of Prior Non-Responsibility Determinations	☐	
Appendix B	Offerer's Certification of Compliance with State Finance Law §139-k (5)	☐	
Appendix B	ST-220-CA Taxation and Finance Contractor Certification	☐	

Appendix B	MacBride & Non-Collusive Bidding Certification	☐	
Appendix B	Diesel Emission Reduction Act	☐	
Appendix B	Small Business Enterprise Certification	☐	
Appendix B	Form A - State Consultant Services - Contractor's Planned Employment	☐	
RFP section 6.8	WCL – Workers Compensation (see RFP for acceptable forms)	☐	
RFP section 6.6	Commercial General Liability Insurance	☐	
RFP section 6.8	EEO 100 Staffing Plan and MWBE Utilization form (can be found at: http://www.ogs.ny.gov/MWBE/Forms.asp)	☐	
RFP section 6.17	Vendor Responsibility Questionnaire (can be found at http://www.osc.state.ny.us./vendrep/vendor_index.htm)	☐	
	Signed copies of all addenda released for this solicitation	☐	

***** *Should there be a discrepancy between the CD-R and the original hard copy, the hard copy takes precedent.*

I certify, with my signature below, that all required information listed above is completed and included in this bid submission.

Authorized Signature: _____

Date: _____

Print Name and Title: _____

Company represented: _____

Signee must be the same as on Corporate Acknowledgement Page

Attachment 3 - Formal Offer Letter

[TO BE COMPLETED ON PROPOSER'S LETTERHEAD]

Date:

NYS Office of General Services
Financial Administration
Corning Tower, 32nd Floor, ESP
Albany, New York 12242

Attn: Nancy L. Dougherty

RE: **Firm Offer to the State of New York**
OGS/ITS RFP# 1819

Dear <Name>:

[INSERT PROPOSER NAME] hereby submits this firm and binding offer to the State of New York in response to New York State Request for Proposals (RFP) No. 1819, issued by the NYS Office of General Services on behalf of the Office of Information Technology Services entitled "Information Technology Risk Assessment."

The Proposal hereby submitted meets or exceeds all terms, conditions, and requirements set forth in the above-referenced RFP. The Proposer substantially accepts the terms and conditions as set forth in Section 6 of the RFP, and Standard Clauses for New York State Contracts in RFP, Appendix A and agrees to enter into a contractual agreement that shall substantially contain the terms and conditions set forth therein. The Proposer will be available to commence services upon OSC approval of a contract. This formal offer will remain firm and non-revocable for a minimum period of 365 days from the Proposal Due Date and Time as set forth in RFP, Section1.5 Key Events. In the event that a contract is not approved by the Office of the State Comptroller (OSC) within the 365 day period, this offer shall remain firm and binding beyond the 365 day period and until a contract is approved by OSC, unless **[INSERT PROPOSER NAME]** delivers to ITS/OGS written notice of withdrawal of its Proposal.

The following is the name(s) of principal(s) of the company responsible for this contract, their function, title and number of years of service with company:

<List>

The Proposer intends to use the following subcontractors in performing any services pursuant to this RFP:

<List>

Or

The Proposer does not intend to use any subcontractors in performing any services pursuant to this RFP.

[INSERT PROPOSER NAME]'s complete offer is set forth as follows:

Technical Proposal: Four (4) originals, Four (4) exact hard copies and one (1) exact write once data storage Compact Disk (CD-R).

Cost Proposal: Four (4) originals, and one (1) exact write once data storage Compact Disk (CD-R).

Administrative Proposal: Four (4) originals and one (1) exact write once data storage Compact Disk (CD-R).

The undersigned affirms and swears s/he has the legal authority and capacity to sign and make this offer on behalf of, **[INSERT PROPOSER NAME]** and possesses the legal authority and capacity to act on behalf of Proposer to execute a contract with the State of New York. The undersigned affirms and swears as to the truth and veracity of all documents included in this offer.

_____

Signature
[INSERT PROPOSER NAME]
[INSERT TITLE]
[INSERT COMPANY NAME]

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }
: ss.:
COUNTY OF }

On the _____ day of _____ in the year 20_____, before me personally appeared:_____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at_____.
Town of_____, County of_____, State of_____, and further that:

[Check One]

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
☐ (If a corporation): _he is the _____ of _____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
☐ (If a partnership): _he is the _____ of_____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
☐ (If a limited liability company): _he is a duly authorized member of_____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____
Notary Public
Registration No.

PLEASE SUBMIT WITH FORMAL OFFER LETTER

Please Note: A "No" response may be grounds for disqualification from this procurement.

	RFP Name: **Proposal Date:**			
2	**Primary Contact Concerning this Proposal:**	**Name:** _____ **Title:** _____ **Address:** _____ **City, State, Zip Code:** _____ **Telephone Number:** _____ **Email address:** _____		
3	**Irrevocable Offer:**	**The rates quoted are an irrevocable offer that is good through the execution of a contract.**	☐ Yes	☐ No
4	**Willingness to Perform All Services:**	**The Proposer is willing to, and capable of performing and providing all of the Deliverables, products and services described in this RFP.**	☐ Yes	☐ No
5	**Appendix A:**	**The Proposer has read, understands, and accepts the provisions of Appendix A, Standard Clauses for New York State Contracts, which will be incorporated, without change or amendment, into the contract entered into between the ITS and the selected Proposer.**	☐ Yes	☐ No

6	**Vendor Responsibility Questionnaire Requirement:**	**The Proposer has (Please check the appropriate box.):** ☐ **Certified and filed the Vendor Responsibility Questionnaire on-line via the New York State VendRep System.** **OR** ☐ **Included a properly executed paper copy of the Vendor Responsibility Questionnaire with the Administrative Proposal.**
7	**The Firm's Taxpayer Identification Number is:** _____ **DUNS #:** _____ (if applicable)	

By my signature on this Formal Offer Letter, I certify that I am authorized to bind the Firm contractually.

Typed or Printed Name of Authorized Representative of the Firm

Title/Position of Authorized Representative of the Firm

Signature

Date

Attachment 4 - Proposer Qualification Certification

Requirements as per RFP section 1.4	Yes	No
A. The vendor has been in continuous business and provided Information Security and Risk Assessments Services as an established line of business for a minimum of 5 years.		
B. The Proposer must have performed a minimum of three (3) baseline security risk assessments of similar scope (minimum 5,000 employees or 5,000 end point devise and/or servers), within the past three (3) years where at least one (1) of which must be for a federal, state or local government entities, that support multiple operating systems and networking technologies in which the vendor was the prime contractor.		

I certify, with my signature below, that all required information listed above is accurate and honest.

_____ **Date:** _____

Authorized Signature

Print Name and Title: _____

Company represented: _____

Attachment 5 – Proposer References

Proposers must provide Three (3) References to support the company's experience.

Please submit one form per reference.

YOUR COMPANY'S INFORMATION

Company Name: _____

Signature: _____

Company Address _____

_____

Year Business Began ____/____/____ No. of Years in Business _____

REFERENCE CUSTOMER'S INFORMATION

Customer Name _____

Customer Signature _____

Customer Address _____

_____

Contact Person _____

Telephone Number _____

_____

E-Mail Address (if applicable) _____

Date Range of Service ____/____/____ To ____/____/____

Dollar Value of Contract _____

Description of services provided, including monthly billable hours:

_____

_____

_____

Attachment 6 - Personnel /Titles / Certifications

Refer to Section 2.3.5 2 Proposed Personnel Experience and Qualifications (Add additional pages as needed)

Title	Name	Years' Experience	Certifications
Project Manager			
Technical Writer			

Attachment 7– Confidentiality Form

Contractor warrants, covenants and represents that it will fully comply with all security procedures of the State in performance of the Contract.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, passwords, business operations information, or other third party commercial proprietary information, records or data which is accessed or made accessible to Contractor as necessary for Contractor to complete work under the Contract ("confidential information"), will not be divulged in any manner to any party by Contractor, its agents, subcontractors, officers, or employees. Contractor further warrants and represents that all confidential information obtained by Contractor, its agents, subcontractors, officers, or employees during the engagement, wherever located, will be immediately destroyed, deleted or otherwise erased or removed, as applicable, upon completion or termination of the work so that Contractor, its agents, subcontractors, officers, or employees will no longer have any ability to access such information. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps to instruct its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

Prior to performing any work on, or having access to the Information Technology Risk Assessment Services project as described in RFP No.1819, each employee of the contractor or subcontractor(s) shall certify by signature below their acknowledgement and acceptance of the above Security/ Confidentiality requirements.

Additionally, by signature and submission of this document by an authorized company official, the contractor certifies compliance with these clauses.

Employee

Printed Name: _____

Job Title assigned for this Project: _____

Signature _____

Date: _____

Authorized Company Official

Printed Name: _____

Title: _____

Signature _____

Date: _____

Completed form must be submitted to:
Division of Financial Administration
New York State Office of General Services
Corning Tower, 32nd Floor
Empire State Plaza
Albany, NY 12242
Attention: Nancy Dougherty