



Office of General Services

DIVISION OF FINANCIAL ADMINISTRATION

ADDENDUM #1 Request for Proposal (RFP 1901)

Date: January 21, 2015

Subject: Questions & Answers

Title: Automobile Claims Administration

Bid Due Date: **January 28, 2015 @ 2:00 PM**

Address Bids to: Wendy L. Fioravanti
 Division of Financial Administration
 NYS Office of General Services
 32nd Floor, Corning Tower
 Empire State Plaza
 Albany, New York 12242
RFP #1901

QUESTIONS & ANSWERS:

No questions were submitted by December 30th, 2014.

All terms and conditions remain unchanged.

If submitting a proposal, this Addendum #1 for RFP 1901 must contain an original signature, be dated, attached to, and made a part of your proposal.

Company Name

Address (include City, State, Zip)

Bidders Name (please print) Title

Signature Date



**Request for Proposals solicited by the
New York State Office of General Services
For
Automobile Claims Administration**

Solicitation Number:	RFP 1901
Release Date:	December 8, 2014
Mandatory Intent to Submit a Proposal:	December 30, 2014
Proposals Due:	January 28, 2015 @ 2:00 PM EST
Designated Contact:	Wendy L. Fioravanti, Contract Management Specialist 1 NYS Office of General Services Financial Administration, 32 nd Floor Corning Tower, Empire State Plaza Albany, NY 12242 Voice: 518-474-5981 Email: Wendy.Fioravanti@ogs.ny.gov

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1. INTRODUCTION

1.1 Overview

The New York State Office of General Services (OGS or State) is requesting proposals from qualified Automobile Claims Administrators (ACA) to process and service claims arising out of the use of motor vehicles owned by or operated on behalf of the People of the State of New York.

1.2 Background

The OGS Bureau of Risk, Insurance and Fleet Management's (BRIM) goal is to assist its customer agencies with their risk management and insurance needs as efficiently and effectively as possible. BRIM is continually exploring innovative ways to utilize risk management and insurance products to re-engineer how the State does business and to save the taxpayers money.

A few of the services BRIM provides include:

- Responding to agency requests for insurance coverage,
- Supporting claimants involved in accidents with State vehicles,
- Advising agencies on how to improve employee safety and loss control practices, and
- Advancing other risk management initiatives.

Specifically, in 1988, the State of New York conducted a study with the Division of the Budget that indicated a substantial savings could be obtained by self-retaining its automobile fleet. On April 1, 1988, the State established a Self-Retained Auto Program and has since contracted with an ACA to process its automobile claims.

1.3 Designated Contact

In compliance with the Procurement Lobbying Law (139j & 139k), Wendy L. Fioravanti, Contract Management Specialist 1, New York State Office of General Services, Division of Financial Administration has been designated the Primary designated contact for this procurement solicitation and may be reached by email or voice for all inquiries regarding this solicitation.

Designated Contact:

Wendy L. Fioravanti, Contract Management Specialist I

New York State Office of General Services

Financial Administration

Corning Tower, 32nd Floor

Empire State Plaza

Albany, New York 12242

Voice: 1-518-474-5981

Email: Wendy.Fioravanti@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

New York State Office of General Services
Financial Administration
Corning Tower, 32nd Floor
Empire State Plaza
Albany, New York 12242
Voice: 1-518-474-5981
Email: Diane.Robinson@ogs.ny.gov

William Macey, Contract Management Specialist III

New York State Office of General Services
Financial Administration
Empire State Plaza
Corning Tower, 32nd Floor
Albany, New York 12242
Voice: 1-518-474-5981
Email: William.Macey@ogs.ny.gov

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

Anuola Surgick, Compliance Specialist 1

MWBE and Community Relations
NYS Office of General Services
Corning Tower, Empire State Plaza
Albany, NY 12242
Voice: (518) 486-6866
Email: Anuola.Surgick@ogs.ny.gov

1.4 Key Events

The Table below outlines the tentative schedule for important action dates. If the State finds it necessary to change any of these dates, notification will be accomplished through an addendum to this RFP.

Action	Date
OGS issues Request for Proposal (RFP) # 1901 for Automobile Claims Administration	December 8, 2014
Proposers submit Mandatory Intent to Submit a Proposal notification to OGS	December 30, 2014
Proposers Questions due to OGS including any exception waiver request	December 30, 2014
OGS issues Responses to Questions (estimated)	January 12, 2015
Proposals due to OGS No later than 2:00 PM EDT	January 28, 2015
Contract start date	June 1, 2015

1.5 Minimum Proposer Qualifications

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

The State considers the following qualifications to be a pre-requisite in order to be considered as a qualified bidder for purposes of this solicitation.

- A. Must be licensed by the State of New York as an independent adjuster, or insurance carrier that is rated "A" or better in AM Best's Insurance Reports.
- B. Shall have at least three (3) years' experience in the service being bid and maintained an organization capable of performing the work hereinafter described, in continuous operation for at least the past three (3) years.
- C. Proposer and any proposed subcontractor is registered pursuant to Article 79 of the NY Insurance Law with the New York State Insurance Department as a provider of service contracts.

1.6 Mandatory Intent to Submit a Proposal

Proposers who wish to submit a proposal **must register** their Intent to Submit a Proposal with OGS by sending notice to the designated contact, Wendy L. Fioravanti, via email Wendy.Fioravanti@ogs.ny.gov. Proposers shall include their company name, address, phone, fax, contact name, title, email address. Proposers must register their intent no later than the date indicated in Section 1.4 - Key Events.

Only registered Proposers will be allowed to submit proposals for this RFP. Also, only registered Proposers will receive updates or responses to questions regarding this RFP. By registering Intent to Submit a Proposal, Proposers are not obligated to submit a proposal. Late submissions will not be accepted. Proposers assume sole responsibility for ensuring that their intent is received and on time.

1.7 Glossary of Terms

“**Appraisal**” shall mean the determination of the value of any damaged property (i.e., vehicle and other than vehicle). Either an independent appraiser or the claims adjuster, as determined and approved by BRIM, may complete the appraisal. The State reserves the right to request an alternate independent appraiser in the event of a dispute with the claimant or adverse carrier.

“**Proposer**”, “**Bidder**”, “**Offerer**” shall mean any person, partnership, firm, corporation or other authorized entity submitting a proposal to the State pursuant to this solicitation.

“**BRIM**” shall mean the NYS OGS Bureau of Risk and Insurance Management.

“**Commissioner**” shall mean the Commissioner of General Services or her duly authorized representative.

“**Contractor**” shall mean the successful company awarded a contract pursuant to this Solicitation.

“**Investigations**” shall include taking statements, accident scene surveys, appraisals, inspections and obtaining all relevant reports and records. All photographs, police reports, fire department reports, medical reports and diagrams obtained as a part of the investigation shall be retained in the hard copy segment of the claim file.

“**Issuing Office**” shall mean the New York State Office of General Services, Division of Financial Administration.

“**OGS**” shall mean the Office of General Services.

“**Request for Proposal**”, “**RFP**” or “**Solicitation**” shall mean this document.

The “**State**” shall mean The People of the State of New York, which shall also mean the New York State Office of General Services.

“**Statement**” shall include obtaining all relevant information about the claim either in a recorded interview conducted by ACA’s claims adjuster (by telephone or in person) or in a written statement, whichever seems appropriate in the best professional judgment of ACA’s claims adjuster.

2. PROPOSAL SUBMISSION

2.1 RFP Questions and Clarifications

There will be an opportunity for submission of questions and/or requests for clarification. Questions and/or clarifications must be submitted, via email, to the Designated Contact. All questions must cite the particular page, section, and paragraph number, where applicable. Please submit questions as early as possible following receipt of the RFP. The final deadline for submission of any questions/clarifications regarding this RFP is listed in Section 1.4 - Key Events. Questions received after the deadline for inquiries may not be answered.

OGS will distribute an addendum with all Questions and Responses to Questions via email on or about the date listed in Section 1.4 – Key Events, to the Primary Contact Person for all vendors that have submitted a timely Intent to Submit a Proposal notice. Vendors that have registered their Intent to Submit a Proposal will also receive any additional updates regarding this RFP, as necessary.

2.2 Technical 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.

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.

A. Cover Letter

The cover letter must confirm that the proposer understands all the terms and conditions contained in this RFP and will comply with all the provisions of this RFP. Further, should the contract be awarded to your company, you would be prepared to begin transition on June 1, 2015 at no cost to the State and be fully operational on July 1, 2015. The cover letter must include the full contact information of the person(s) OGS shall contact regarding the bid and must also include the name(s) of principal(s) of the company responsible for this contract, their function, title and number of years of service with company. A Proposer Representative authorized to make contractual obligations must sign the cover letter. The letter must also state whether or not subcontractors will be used, and the name, address, and intended role of each proposed subcontractor.

B. Minimum Proposer Qualifications

Proposers must confirm their ability to meet the minimum qualifications set forth in Section 1.5 Minimum Proposer Qualifications.

Information provided shall include:

1. Proof of licensure by the State of New York as an independent adjuster, or insurance carrier that is rated “A” or better in AM Best’s Insurance Reports.
2. Proof of at least three (3) years’ experience in the service being bid, and maintained an organization capable of performing the work hereinafter described, in continuous operation for at least the past three (3) years.
3. Proof that the proposer, and any proposed subcontractor is registered pursuant to Article 79 of the NY Insurance Law with the New York State Insurance Department as a provider of service contracts.

C. Operational Work Plans & Methodology

The plan of operations should include, in the Proposer’s own words, their understanding of the issues and tasks of the project(s) at hand. Proposers are required to present a detailed description of the methodology to be used by their firm in achieving the objectives of the project and accomplishing the tasks described in the Scope of Work, Section 5, with separate and specific reference to each subsection. The Operational Work Plans & Methodology shall include a detailed Transition Plan, including a schedule of deliverables, for the successful transition to begin upon the contract award notifications and continue through the contract start.

1. **Management Overview**
Provide a statement designed to convince the State that the Proposer understands the objectives any contract resulting from this RFP is intended to meet, the nature of the work and level of effort necessary to successfully provide the services required by such contract.
2. **Provide a Conflict of Interest Statement (see Section 3.8)**
3. **Methodology**
Provide a detailed outline of plans and approach for providing all services required by this RFP. Describe any data and support you will require of the State.
4. **Staffing Plan**
Describe the proposed staffing plan (see Section 5.4). Include proposed roles and hierarchy. Include an organization chart.

5. Location of the office responsible for managing this contract. Include primary contact name, telephone number and fax number.

6. Describe initial and ongoing training process.

7. Computer System

Describe the system that the company uses for claims processing. Include the following:

A. Security of Hosting Environment

1. Describe the security architecture of the overall environment in which the application is contained.
2. Provide the following policies (or general information about them) in regard to the hosting environment:
 - a. Backup policies
 - b. Data center physical security policies
 - c. Firewall policy
 - d. Third Party connection policy
 - e. Remote access policy
 - f. Disaster recovery policy
 - g. Patch management policy
 - h. Anti-virus policy
 - i. Vulnerability management policy
 - j. Password policies
3. Describe your intrusion detection systems, if any.
4. Describe any high-availability and scalability features in the hosting environment that are relevant to the proposed system.
5. Describe the quality control and change control processes for making revisions to the application.
6. Indicate the name and contact information for your ISP(s) [Internet Service Provider(s)].
7. Indicate the bandwidth of your data center's Internet connection(s).
8. Provide any third party security certification information and/or reports for the application and/or the hosting environment.
9. Provide information about any insurance your company carries for covering security incidents.

B. Application Security

1. Describe the security architecture of the proposed application.
2. Provide information about the web server OS, web server software, and patch levels.
3. Provide information about the user authentication process.

4. Indicate where the system stores user passwords.
5. Demonstrate application provides user-friendly error messages when an error occurs.
6. Indicate if there is an inactivity timeout. If so, how long it is.
7. Provide information about application logging (e.g., what information is logged, how long are logs kept).
8. Demonstrate client access to the application is via a web browser using the standard HTTPS port.
9. Indicate whether cookies are used and, if so, their purpose.
10. Describe the granularity of user access control.
11. Indicate any other safeguards on the system that ensure unauthorized access is not obtained.
12. Describe how OGS BRIM will have read access to all data and reports.

C. Technical

1. Describe how you allow user defined validation/business rules.
2. State the overall availability of the system.
3. Describe any maintenance window you have.
4. State the notification timeframe for taking the system down for repair or upgrade.
5. Vendor must demonstrate that it is able to dump all NYS data into a readable format, if requested.
6. Describe your help features, including on-line and/or written manuals.
7. Discuss the service level for problem resolution.
8. Describe any emergency telephone service that is part of your product support. Include local hours (Eastern Time Zone) that this service is available.

***Note:**

Please see Section 4.1 Proposal Evaluation regarding demonstration requirement

D. Proposer Experience and Qualifications

Provide documentation and a detailed description of the firm's organization, experience that will substantiate the firm's qualifications and capabilities to provide the services required by this RFP, including but not limited to the following:

1. Experience in claims administration, including recent and current contracts, and number of years of experience in providing these services. Emphasis should be given to experience with governmental agencies.
2. Organization and central processing office's ability to promptly process liability claims and settlements resulting from vehicle accidents, indicating the number

of claims processed, the time elapsed to process such claims, approval and rejection rates, etc.

3. Policy and experience in detecting and addressing areas of potential fraud and abuse.
4. Competency, past performance and other similar factors that demonstrate an ability to implement and service a statewide program geographically throughout the State for the entire contract period.

E. Experience and Qualifications of Key Personnel

The Prospective Bidder shall provide the following additional information:

- Resumes of the officers and employees responsible for this contract, their function in the company, title, and number of years of service with the Contractor's firm.
- Identify the personnel being proposed for the on-site and off-site staffing as detailed in section 5.4.; provide resumes and credentials.
- The name of the contact person who will handle the day-to-day customer requests, in regard to this contract.

F. References

All Bidders must provide a minimum of five (5) references, including references from three (3) of the Bidder's largest customers. Governmental references are preferred, and should demonstrate the ability of the Contractor to perform jobs similar in scope to the size, nature and complexity of the outlined bid. The references shall include the following:

1. Company name, address, contact person, title, telephone number, fax number, e-mail address and number of years Bidder has serviced the referenced account;
2. Scope of Work performed within the past three (3) years for each referenced account.

G. Proposers Submission Checklist

Proposers are required to utilize the contractor's Proposal Submission Checklist, found in Attachment 2, and submit a completed copy thereof with its proposal. Use of the Proposal Submission Checklist shall not preclude the Issuing Office from requesting information that is not included in the checklist, but is required in the RFP.

OGS retains the right to request any additional information pertaining to the Bidder's ability, qualifications, and procedures used to accomplish all work under this contract as it deems necessary to ensure safe and satisfactory work.

2.3 Cost Proposal

Proposer shall submit a completed Cost Proposal Form (Attachment 1) in a separately sealed package within the proposal submission and must be clearly identified as the cost proposal. The Cost Proposal Form must be complete with no lines omitted.

Proposer shall not deviate from the Cost Proposal Form as provided. Any additions, incompleteness, altering qualifiers, assumptions or clarifications to the cost proposal form will result in rejection (also see section 2.5 Packaging of RFP Response and Section 3.3 Price).

2.4 Administrative Proposal

- A.** All other required completed forms from RFP 1901, Appendix B.
- B.** Attachment - 2 Proposal Submission Checklist
- C.** Important Notes:
 - Insurance – Proposers are reminded of the insurance requirements as described in Section 6.3. 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 6.5.
 - Vendor Responsibility - Proposers are reminded of the requirement as described in Section 6.14, 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.
 - Document Consistency - An award will only be made to the entity which has submitted a 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

2.5 Packaging of RFP Response

Cost Proposal - Please submit (4) originals of Attachment 1– Cost Proposal Form, and a CD-R*, both clearly marked **“Cost Proposal” in a separate sealed envelope.**

Administrative Proposal - Submit (4) originals and a CD-R* of all required forms from Appendix B in a clearly marked package.

Technical Proposal - Submit (4) originals, (4) copies and a CD-R* in a clearly marked package. **Note:** No overt statements about costs shall be included in the Technical Proposal.

All 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 – RFP 1901
- Proposal Due Date and Time: (as indicated in Section 1.4 - Key Events)
- Proposal for Automobile Claims Administration.

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

Failure to complete all information on the bid envelope and / or packages may necessitate the premature opening of the bid and may compromise confidentiality.

2.6 Instructions for Bid Submission

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

Please 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: Wendy L. Fioravanti
RFP # 1901**

- All bids must be completed in ink or machine produced.
- Handwritten bids will be disqualified.
- Only those Proposers who furnish all required information and meet the mandatory requirements will be considered.
- 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 1.4 - 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 120 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 120 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/>

3. ADMINISTRATIVE INFORMATION

3.1 Issuing Office

This solicitation is being released by the New York State Office of General Services Division of Financial Administration on behalf of the Office of General Services Bureau of Risk and Insurance Management Office (BRIM).

3.2 Method of Award

One contract shall be awarded under this solicitation to the responsive and responsible Proposer affording the best value to the State. The contract awarded under this solicitation will be made to the responsive and responsible Proposer receiving the highest total score using the evaluation criteria listed in Section 4 - Evaluation and Selection Process.

Upon determination of the best value proposal, a contract, between OGS 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 selected Contractor, shall be used to establish the contract value. The established contract value shall not be exceeded.

3.3 Price

Prices shall be represented as fixed annual amounts for the ACA Service terms. The fixed rates shall be inclusive of all labor (wholly inclusive of all requirements of Section 5), licenses, insurance, travel, administrative, training, overhead and profit, sustenance, lodging and employee benefits.

Prices must be submitted using the Cost Proposal Form (Attachment 1). Submitted bids must follow the format of Attachment 1. Any additions, exceptions, qualifiers, assumptions, ranges, etc. will result in rejection of the proposal.

3.4 Term of Contract

The contract resulting from this RFP will become effective on June 1, 2015 and will continue through July 31, 2020, for a term of five (5) years and one month. The month of June 2015 is intended to be for transition planning and preparations. The contractor shall commence full contract operations on July 1, 2015. Also see Section 3.5 herein.

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 OGS's intent to cancel. Any cancellation by OGS 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 OGS, its agents and employees therefore for lost profits or any other damages resulting there from. This provision shall 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.

3.5 Method of Payment

For the purposes of this contract, payment will be issued on a monthly basis with payment made on a 1/12th annual amount in arrears basis, commencing at the completion of July 2015. Upon satisfactory completion, inspection and approval by the Bureau of Risk and Insurance Management (BRIM), an invoice may be submitted to the OGS Business Services Center – Accounts Payable Unit for payment. The invoice 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 contain the Contract ID number (i.e.: OGS01-C00XXXX-1140000), a unique invoice number, the date range for the month services were performed. Pricing must be in accordance with the cost proposal form.

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 until a corrected invoice is received and approved by OGS.

All invoices or vouchers must be submitted for payment to:

ACCOUNTS PAYABLE
BUSINESS SERVICE CENTER -or-: accountspayable@ogs.ny.gov
OFFICE OF GENERAL SERVICES
EMPIRE STATE PLAZA STATION
P. O. BOX 2117
ALBANY, NEW YORK 12220-0117

Also, a copy of the invoice and reports must be forwarded to the Claims Administrator of BRIM, Sandra.Archino@ogs.ny.gov

3.6 Electronic Payment

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's 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 (OSC) 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 Conflict of Interest

Any bidder offering to provide services pursuant to this RFP, as a contractor or subcontractor, shall attest that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor cause the bidder to breach any other contract currently in force with the State of New York.

Furthermore, bidders shall attest that they will not act in any manner that is detrimental to any State project on which the bidder is rendering services. Specifically, bidders shall submit with their proposal a letter, signed by an officer authorized to bind the company, attesting that:

- The fulfillment of obligations by the bidder, as proposed in the response, does not or will not create any conflict of interest, or perception thereof, with any current role or responsibility the bidder has with regard to any existing contracts or agreements between the bidder and the State.
- The fulfillment of any other contractual obligations that the bidder has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP.

3.9 Security/Confidentiality

By submission of a proposal, 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 during the Contract term or for a period of five (5) years thereafter in any manner to any party by Contractor, its agents, subcontractors, officers, or employees. All contractor staff assigned to this agreement shall be required to execute a Security – Confidentiality Statement (See Exhibit A)

3.10 Exceptions to RFP

The Issuing Office will consider all requests to waive any RFP requirement. However, proposer should be aware that failure to obtain a waiver of any RFP requirement in

advance of proposal submission could result in rejection of Proposer's proposal and disqualification from the proposing 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 1.4 - 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 with the 'Responses to Questions' as identified in Key Events (if the response results in a change to the RFP), or directly to the requesting vendor.

3.11 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 proposal solicitations, contract awards, and contract administration. OGS Financial Administration encourages vendors to seek resolution of disputes informally, through consultation with OGS Financial Administration staff, prior to commencing a formal dispute process. All such matters will be accorded full, impartial and timely consideration. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the designated contact person identified in the solicitation.

3.12 Examination of Contract Documents

- Each Vendor 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 Vendor 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 Vendor to fulfill every detail of all the requirements of the documents governing the work. The Vendor, 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 Vendor in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit to Wendy L. Fioravanti, Division of Financial Administration, 32nd Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242 e-mail: Wendy.Fioravanti@ogs.ny.gov a written request for an interpretation thereof. If a major change is involved to which all vendors must be informed, such request for interpretation shall be delivered, in writing, no later than question due date listed in Section 1.4. Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be e-mailed to vendors who have registered Intent to Submit a Proposal.
- Any addendum issued prior to the proposal due date must be acknowledged by signature, dated and be submitted on or before the proposal due date with four (4) originals. In awarding a contract, any addenda will become a part thereof.

- Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services at the time of examination of the documents or site shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, to all Proposers shall become a part of the contract.

3.13 Prime Contractor Responsibilities

The State will contract only with the successful Vendor who is the Prime Contractor. The Issuing Office considers the Prime Contractor, 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 subcontractors who carry out any of the provisions of any contract resulting from this RFP.

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.

4. EVALUATION AND SELECTION PROCESS

4.1 Proposal Evaluation

Responsive proposals will be independently evaluated based upon the criteria set forth in this Section. Proposals will be evaluated for best value to the State.

The State may request that Contractors submitting responsive proposals provide telephone interviews with the proposed on-site and off-site personnel (see section 5.4),

The proposer must provide an oral presentation which will be given on a date, time and location to be designated by OGS. The presentations will be conducted in Albany, NY and should be attended by the proposing firms' officers / employees responsible for the contract. A demonstration of the proposed computer system functionality will be included.

OGS reserves the right to check references or conduct site visits as part of the evaluation process. 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. Also see Section 2.2.F. - References.

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

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

Note: Information learned from reference checks, telephone interviews and oral presentations, shall be used in conjunction with the submitted proposal as cumulative information for the scoring of technical points.

4.2 Proposal Scoring

Scores from each of the Proposers, including items A-F listed below, 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.

A. OPERATIONAL WORK PLANS & METHODOLOGY (22.5%)

Each Proposal will be evaluated as to the extent by which Proposer's operational plans, methods, and systems meet the goals and requirements of the RFP.

B. PROPOSER EXPERIENCE AND QUALIFICATIONS (22.5%)

Each Proposal will be evaluated as to the relevant experience and qualifications of the company.

C. EXPERIENCE AND QUALIFICATIONS OF KEY PERSONNEL (16.5%)

Each Proposal will be evaluated as to the relevant experience and qualifications of the key personnel.

D. QUALITY AND COMPLETENESS (5.0%)

Each Proposal will be evaluated for the extent to which the proposal satisfies and addresses each requirement of the RFP. Consideration will also be given to the overall organization of, and ease of navigation of the submitted proposal.

E. MWBE or SBE Status (3.5%)

- 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)

Proposers that are New York certified Minority and Women owned business or a New York State small business will receive an additional 3.5% for such status.

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

F. COST (30%)

Attachment 1 cost proposals will be evaluated in relation to all cost proposals submitted.

4.3 Evaluation Process**A. Technical Evaluation (70%)**

The technical evaluation committee will evaluate and score each responsive proposal for items A–D listed above. Points for MWBE or SBE status will be awarded as described in E above.

B. Cost Proposal Evaluation (30%)

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 F listed above). Each subsequent proposal will receive a proportionate number of points using the following formula: low bid / bid being evaluated X category weight.

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 their 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 Section

5. SCOPE OF WORK

5.1 General Scope

The State of New York currently self-retains its automobile exposure. The ACA will be responsible for investigating, negotiating and recommending settlement for all claims received from the State. The ACA will be responsible for subrogation of loss transfer and first party property damage (excluding New York State Department of Transportation and New York State Police). Such investigation, negotiation and recommendation of settlement shall be timely and efficient. A State appropriation will permit settlements up to \$25,000 for bodily injury, wrongful death, and property damage, \$50,000 per person for "no fault" benefits, and \$25,000 per person, \$50,000 per occurrence for uninsured motorist coverage.

For payment of all bodily injury, wrongful death, property damage liability, no fault and uninsured motorist claims, written approval from the State will be required before settlement, as specified in this RFP. Bodily injury, wrongful death and property damage claims over \$25,000, and all litigation arising from any automobile liability claims will be referred to the New York State Department of Law. The Department of Law will provide legal services for the defense of all litigation against the State or its officers or employees arising from accidents. The ACA will be responsible for completion of any investigation regardless of when litigation commences.

The State currently has a fleet of approximately 32,000 vehicles consisting of passenger cars, trucks, vans, buses, motorcycles, limited use vehicles and tractor trailers. The ACA will be responsible for processing approximately 1,500 claims annually arising from accidents received during the contract period.

5.2 General Requirements

- A.** Must assume responsibility for all open claims being handled by the current TPA for no additional cost.
- B.** Ability to identify the potential for loss transfer.
- C.** Must attend meetings, as requested, with OGS BRIM and other representatives of the State.
- D.** Must make available approximately 15% of all active and settled claims so that BRIM may conduct quarterly audits at the ACA's office.
- E.** Accessible on-line claims system with pertinent reports.
- F.** Must provide reporting compliance as a Designated Agent with Section 111 Medicare Secondary Payer Mandatory Reporting per the Coordination of Benefits Contractor (COBC). <http://www.section111.cms.hhs.gov>.
- G.** Must have or establish a central processing office where all files and records pertaining to accidents involving covered vehicles will be stored and BRIM staff can visit on a regular basis.

- H. Must have the ability to process claims from throughout the State.

5.3 Claims Process

A. Receipt of Claims

1. All State agencies will submit their accident reports directly to BRIM. Then, BRIM will forward accident reports to the ACA via mail, fax or e-mail. If the ACA receives inquiries about claims directly, before receipt of the report from the State, the ACA shall obtain claim information and request the report from BRIM.
2. Upon receipt of the accident reports, the ACA shall immediately send written confirmation of receipt to the State. This written confirmation shall include the date of accident, State driver's name and must provide the claim number and claim handler that has been assigned to the claim.

B. Coverage

ACA shall confirm coverage with BRIM if there is any question about whether an incident or damage is covered.

C. File Creation and Maintenance

1. ACA shall create a claim file within twenty-four (24) hours of receipt of a claim. Files shall include all accident reports (e.g., MV104), diary entries, setting of reserves, monetary transactions, cross references to other segments of the file and any other pertinent information.
2. ACA shall fully document all investigation efforts, including all statements and each contact with witnesses, claimants, State drivers/supervisors, doctors, etc.
3. ACA shall maintain accurate information about efforts to conclude the claim, offers of settlement made and responses received. All attempts to settle shall be fully documented in the file.

D. Prompt Contact with Claimant

1. ACA shall promptly contact any third party claimant within twenty-four (24) hours of receipt of the claim to make an appointment to inspect the damage and/or take a statement from claimant. Initial statements and/or inspections shall be completed within seventy-two (72) hours of receipt of the claim.
2. Once it is known that a vehicle is a total loss, the appraiser must notify the adjuster immediately. Upon notification, total loss figures must be calculated and contact made with the claimant to ensure that costs are mitigated.
3. ACA shall complete initial follow-up with claimants within fourteen (14) days and every thirty (30) days thereafter, while the claim file is open.

E. Correspondence

1. Correspondence received by ACA shall be date-stamped on the day it is received. New claims shall be given to ACA's claims manager for adjuster assignment on the same day. All other correspondence shall be matched with the appropriate claim file and given to the responsible claims adjuster within forty-eight (48) hours. Unmatched mail shall be reviewed by ACA's claims manager within three (3) working days of receipt and appropriate action taken.
2. Correspondence from ACA shall in all cases be typewritten on pre-printed forms.

F. Reserves

1. ACA shall set reserves for claims as soon as there is sufficient information about the claim available to make a reasonable estimate of the value of the claim. In all cases, a reserve shall be set when the claim file is opened, or no later than five (5) days after receipt of the claim for property damage and no later than fifteen (15) days for a bodily injury claim.
2. After reserves have been set, ACA shall review and adjust reserves whenever new information that would change the evaluation is received. Because all necessary facts may not be available at the onset of a claim, reserves shall be adjusted when medical information or investigation indicates the existing reserve is inadequate or set too high. The adequacy of reserves must be reviewed at least every three (3) months if applicable, and file shall be documented to reflect this review and substantiate any adjustments in the total reserve within twenty-four (24) hours of the change. Reserve changes shall be input to the data system within twenty-four (24) hours.

G. Contact with the State

1. The ACA shall notify BRIM within twenty-four (24) hours of receipt of information that was not known when the claim was reported and indicates a potentially high loss exposure of twenty-five thousand dollars (\$25,000) or more.
2. The ACA shall make available approximately 15% of all active and settled claims so that BRIM may conduct quarterly audits at the Contractor's office. In addition, BRIM will review the ACA's success in keeping settlements in line with industry standards.
3. The ACA shall obtain written approval from BRIM and the Department of Law prior to the settlement of any bodily injury, wrongful death, uninsured motorist or property damage claim.
4. The ACA shall transfer complete investigation files to the Department of Law whenever legal action is commenced against the State or State driver, or for

any property damage or bodily injury claim that the ACA cannot settle for under \$25,000.

5. ACA shall assist the State in minimizing its litigation of liability claims.
6. The ACA shall provide the percentage of comparative negligence used when recommending settlement for all property damage and bodily injury claims.
7. ACA shall comply with all New York State Insurance Department laws, rules and regulations that set minimum standards for the processing of property damage, no fault, bodily injury, wrongful death and uninsured motorist claims, and for reporting fraud. Specifically, ACA shall comply with all applicable provisions of NYS Insurance Department Regulation Number 64 (11 NYCRR 216), to the same extent as if the ACA were an insurer.
8. ACA shall contact the State at least every thirty (30) days on all open claim files to keep the State informed of the claims development.

H. Claim Investigation

1. ACA shall personally complete all investigations necessary for the proper adjustment of the claim. The proximate cause of the claim shall be identified.
2. The ACA shall, at no additional cost to the State, complete an appraisal on all third party vehicle property damage claims that exceed \$1,500 or if it is determined that the damage is questionable.
3. The ACA shall, at no additional cost to the State, complete an appraisal on all first party vehicle property damage claims if requested by the State.
4. The ACA shall, at no additional cost to the State, complete an appraisal on third party claims involving property damage (i.e., other than on motor vehicles) when reasonably necessary.
5. If private investigators or other professional services are to be used for any aspect of claims investigation, use of such shall be approved in writing by BRIM prior to assignment.
6. When deemed necessary, ACA shall take statements of all persons involved in the incident. If there are any witnesses and if there are any conflicts with the claim, ACA's claims adjuster shall also take statements from any witnesses that can be discovered and located.

I. Settlement of Claims

1. After investigation, ACA shall make a good faith effort to settle all valid claims for less than \$25,000 per claimant. In the event the ACA believes it cannot

settle the claim for under \$25,000 per claimant, the ACA shall evaluate the full settlement value of the claim.

2. On all third party claims with questionable liability or comparative negligence, the adjuster must submit an Investigation Outcome Report (IOR) to BRIM and the Attorney General for review/approval. The IOR may also be used for requesting authority to deny a claim for PD or BI-(liability, Vehicle & Traffic Law of the State of New York, §1103 and §1104 etc.) or a BI claim for no threshold. In cases where the IOR for denial of a no threshold claim is to BRIM, the adjuster needs to attach a complete summary of the injuries and treatment with the IOR. Such requests shall include the adjuster's name, type of claim, date of loss, full value of the claim, and if applicable, the comparative negligence value, the claim number, the State driver's name, the claimant's name, a brief description of the loss, and a description of repairs and amount of estimate, in the event of property damage. The State reserves the right to institute this approval process for first party claims as well.
3. The ACA shall submit via fax or electronic copy, a request for settlement authority to BRIM. Such request must include the adjuster's name, type of claim, full value of the claim, the comparative negligence value (if applicable), the claim number, the State driver's name, the claimant's name, a brief description of the loss and a description of repairs and amount of estimate (if applicable).
4. Upon receipt of a request for settlement authority, BRIM will forward the request to the Department of Law. When BRIM and the Department of Law concur with the findings, the ACA shall settle the claim within the parameters of the contract. If BRIM and the Department of Law do not concur with the findings, the ACA will be notified.

J. Claim Payments

1. The ACA shall submit a weekly list of approved claims and approved Ancillary Services as identified in Section 5.2.2.O to BRIM. This list must include the following:
 - a. State driver's name
 - b. claim number
 - c. claimant's name
 - d. type of claim (bodily injury, no fault, or property damage)
 - e. date of accident
 - f. payee
 - g. payment amount and
 - h. adjuster

2. The list must also include a statement certifying that the ACA has complied with the terms of the contract prior to the issuance of these checks or drafts. The list must be faxed to BRIM on Friday of each week by 12:00 noon.
3. The claims fund will be set up as a zero balance account. BRIM will mail a check to the ACA. The ACA shall release the checks or drafts corresponding with the weekly list within 24 hours of receipt of a check from the State. Please provide alternative ways of paying claims. An example would be to pay claimants during the week as payment authority is granted, in lieu of issuing all checks on Friday. This would expedite payment and closure of claim files.

K. First Party Claims

1. The ACA shall, at no additional cost to the State, complete an appraisal on first party vehicle property damages claims, when deemed necessary.
2. Any funds recovered as a result of this effort shall be made payable to the State of New York and forwarded to the appropriate state agency, along with appropriate documentation with a cc to BRIM.
3. The ACA shall be responsible for providing detailed reporting for these recoveries.

L. Audit

1. BRIM will audit approximately 15% of all active and settled claims on a quarterly basis, and the contract will be subject to post audit by the Comptroller. The ACA shall make such specific claims determined by the state and office space available.

M. Lawsuits

1. Whenever legal action commences on a claim against the State, or an officer or employee of the State, the ACA shall complete the claim investigation required by the contract and provide the Department of Law with their original claim file if investigation reveals the claim cannot be settled within the \$25,000 limit.
2. The Department of Law will have thirty (30) days to determine whether additional information is needed from the ACA. If no additional information is required, the ACA's claim file shall be closed.

N. Claim Fund Costs

1. All claim payment costs to the ACA shall include allocated expenses that are considered normal costs of doing business, including auto and property

damage appraisals, and no fault bill review. These costs will be encompassed in the flat rate charges of the contractor.

O. Ancillary Services

1. Services provided by the ACA, for independent medical exams, special or private investigations, accident reconstruction expert, engineering surveys, surveillance, large equipment appraisals, reviews by Diagnostic Review Groups (DRGs), legal representation at No Fault arbitration and other miscellaneous expenses will require proper documentation and prior approval by BRIM and or the Attorney Generals Offices. These expenses will be paid, without any markup, separately through the Insurance Cost Recovery Fund and are subject to the established controls for such fund.

P. Ownership of Information

1. All data and information related to vehicle liability claims and payment thereof obtained while administering this contract is the property of the State and will be made available to the State upon request.
2. The ACA shall be responsible for establishing a record retention plan for all claims files that meet with BRIM's approval.

Q. Record Takeover and Turnover

1. The ACA will coordinate with the prior ACA to obtain possession of all records related to open claims, and will complete all work necessary to close out such claims.
2. Upon completion or termination of the contract resulting from this RFP, the ACA shall execute a smooth turnover of all records and files concerning open claims to a successor ACA, and or BRIM, with no adverse effect on the administration of the program and the payment of claims.

R. Loss Transfer

1. The ACA shall perform all services necessary to pursue recovery of "no fault" benefits paid pursuant to Section 5105 of the New York State Insurance Law. There will be no additional compensation for these services.
2. Any funds recovered as a result of this effort shall be made payable directly to the State of New York and forwarded to BRIM.
3. The ACA shall be responsible for providing detailed reporting for these recoveries.

S. Arbitration

1. Upon receipt of an arbitration notification, the ACA shall inform BRIM of the hearing date and time.
2. The ACA shall be responsible for obtaining proper legal representation as necessary, to cover all aspects of the arbitration.
3. BRIM will monitor the efforts of the ACA and legal representation to ensure the State's interests are protected.

T. System On-Line Reports

1. ACA shall submit a full captioned report to BRIM for claims paid and claims with reserves in excess of ten thousand dollars (\$10,000) and all claim files investigated for litigation within thirty (30) days of setting a reserve at or above that amount. These full captioned reports shall include at minimum, the following information:
 - a. date of loss/State driver/claim number,
 - b. background and basis for the claim,
 - c. names of all parties and attorneys, if there is pending litigation,
 - d. summary and update of any pending litigation,
 - e. percentage of liability,
 - f. full and settlement values, and
 - g. history of all settlement attempts, both before and after the initiation of litigation.
2. ACA shall prepare and forward follow-up reports to BRIM within ninety (90) days of the full captioned reports.
3. ACA shall provide property damage and no fault savings reports.
4. ACA shall submit monthly, computerized loss statements to the State, showing open reserves, paid claims and defined allocated expenses.
5. ACA shall prepare and submit monthly Health Care Reform Act (HCRA) reports.
6. ACA shall be responsible for producing ad hoc and customized reports at the request of BRIM.

U. Settlement Authority

The Contractor shall not have settlement authority for claims. BRIM and the Department of Law shall retain settlement authority unless written consent is granted.

V. Training

1. The Contractor must provide staff training for the online claims system.
2. Training must be comprehensive.
3. On-going training must be available for refreshing prior trainees and for new trainees.
4. On-line help screens and/or a help manual must be available to users for support on all system reports.

5.4 Staffing Requirements

The Prospective Contractor shall maintain a staffing plan during this contract that provides employees who will be fully dedicated to this contract.

A. Off-Site

Dedicated off-site employees are expected to work at the contractor's location that will service this contract. At a minimum, this should include one (1) manager *and* three (3) adjusters.

B. On-Site Staffing Requirement

The Prospective Bidder must provide two on-site Contractor representatives at the BRIM in Albany, New York. These representatives will be permanent employees of the Contractor, not the State of New York, though OGS will have the right to accept or reject specific candidates. Their employment will include 37.5 hours per week exclusive of State holidays, as well as sick, personal and vacation time not to exceed 4 weeks per calendar year. Their duties will include administrative and clerical services in support of the daily operation of the contract and program.

C. Staffing Expectations

The Office of General Services expects that all services will be conducted diligently and effectively under the supervision of OGS staff. Further, it is expected that:

1. Any contractor staff shall conduct themselves in a professional manner with OGS staff and with the General Public.
2. Any staff assigned shall report to work in appropriate dress and appearance.
3. All contractor staff shall comply with all rules and requirements of this solicitation, including the prohibition of the use of drugs and alcohol prior to or during any period of work to which they are assigned.
4. If during the term of the contract the staff assigned are replaced, the new staff must meet the experience requirements and must be pre-approved by OGS. OGS reserves the right to request that an adjuster be replaced if they do not meet our needs.
5. Any failure to comply with any of the requirements of this solicitation shall result in the removal from the project.
6. Staff provided under this contract will obtain, at the contractors expense both time and cost of training courses, continuing professional education as necessary.

D. Staff Replacement

Contractor shall maintain the availability of staff throughout the term of this Contract. Contractor shall obtain OGS 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.

OGS may, in its sole discretion, remove any Contractor staff from the position for any reason and Contractor shall replace the staff within 30 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 staff member(s).

E. Staff Replacement between Tentative Award and Contract Approval or Commencement of Work

If for any reason a Proposer provides notice to OGS that the Proposer 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 Contractor, then OGS may choose to withdraw the award or terminate the Contract and make a subsequent award to the next highest ranking Proposer. The selected contractor shall be required to provide such notice if such a situation arises. (Also see “inspection” in Section 6.7)

F. Background Check

For security reasons, all prospective employees and subcontractors that will be performing services hereunder on the State’s premises are to be properly screened in accordance with OGS provided background check guidelines (see Appendix E), at the Contractor’s sole expense. Additionally, Contractor and its employees must comply with any other requirements in place for security clearance for the building including the provision of information required by the State Police, if any.

G. Security Badges

OGS ID badges will be required and must be prominently displayed at all times by all employees performing work on State premises. OGS will provide the ID badges to the Contractor at a cost of \$10.00 per employee. If a replacement badge is needed for one which is lost there is a \$20.00 replacement cost. These badges are obtained from the Department of Motor Vehicles system for all employees with a driver license or non-driver ID. Employees who do not have either a New York State Driver’s license or non-driver ID will be required to obtain one in order to process the ID.

Note – There is a process for obtaining ID Badges, which will be discussed at the initial job meeting upon award.

5.5 Computer System

The contractor must have and maintain a web based computer system to be used for claims processing. The system must have:

A. Security of Hosting Environment

1. Policies in regard to the hosting environment:
 - a. Backup policies
 - b. Data center physical security policies
 - c. Firewall policy
 - d. Third Party connection policy
 - e. Remote access policy
 - f. Disaster recovery policy
 - g. Patch management policy
 - h. Anti-virus policy
 - i. Vulnerability management policy
 - j. Password policies
2. Intrusion detection systems.
3. High-availability and scalability features in the hosting environment that are relevant to the proposed system.
4. Quality control and change control processes for making revisions to the application.
5. ISP(s) [Internet Service Provider(s)].
6. Sufficient bandwidth for your data center's internet connection(s).
7. Third party security certification information and/or reports for the application and/or the hosting environment.

B. Application Security – Must have:

1. Sufficient security architecture for the proposed application
2. Web server OS, web server software, and patch levels
3. User authentication process
4. System stores user passwords.
5. Application must provide user-friendly error messages when an error occurs.
6. An inactivity timeout.
7. Application logging
8. Client access to the application must be via a web browser using the standard HTTPS port.
9. Cookies must be easily enabled to be compatible with NYS BRIM
10. Sufficient granularity of user access control.
11. Safeguards on the system that ensure unauthorized access is not obtained.
12. Provide OGS BRIM will have read access to all data and reports

C. Technical

1. Allow user defined validation/business rules.
2. State the overall availability of the system.
3. Must have maintenance window.
4. Standard notification timeframe for taking the system down for repair or upgrade.
5. Vendor must be able to convert all NYS data into a readable format, if requested.
6. Help features must include on-line and/or written manuals.
7. Must have service levels for problem resolution.
8. Must have emergency telephone service that is part of your product support. Include local hours (Eastern Time Zone) that this service is available.

D. Security Reviews

OGS is required by New York State policy to conduct periodic security reviews of the outsourced environment to ensure the security and availability of OGS information (see Appendix D).

5.6 Administrative and Reporting Requirements

The Contractor shall be responsible for the completion of a variety of administrative and reporting requirements, and the cost thereof shall be included in the bid price.

- A.** The Contractor is obligated to meet with OGS BRIM for an initial meeting, and also obligated to meet with OGS BRIM as necessary to discuss the following:
 - 1. Review job progress; quality of work; and approval and delivery of contract service.
 - 2. Identify and resolve problems, which impede claims handling.
 - 3. Coordinate the efforts of all concerned to ensure compliance with all terms and conditions of the contract.
 - 4. Maintain a sound working relationship between the Contractor and OGS BRIM, and a mutual understanding of the contract.
 - 5. Review the service performance so the contract objectives are met.

- B.** The contractor is obligated to provide a written monthly report itemizing services performed during that month.

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. Appendix A is a separate document to this RFP and shall be retained for reference by the proposer.

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 (January 2014)
2. The Contract
3. OGS Solicitation Number 1901 (This Document)
4. 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 OGS and an Offerer/Proposer during the procurement process. An Offerer/Proposer 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 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. 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/Proposer 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/Proposer is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

<http://ogs.ny.gov/About/Regs/Statutes.asp>

http://ogs.ny.gov/aboutOgs/regulations/SFL_139j-k/permissibleContacts.pdf

6.3 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") and all applicable endorsements, evidencing compliance with all requirements contained in this Section. Such Certificates and endorsements shall be of a form and substance acceptable to OGS.

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 or authorized by the

New York State Department of Financial Services to issue insurance in the State of New York to do business in New York State; 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 or a substitute form providing equivalent coverages). 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 above \$100,000 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. If, during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by this Contract, or not providing proof of the same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should a Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS may withhold further contract payments, treat such failure as a breach or default of the Contract. In the event of such a material breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to the People of the State of New York and the New York State Office of General Services. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of any Contract resulting from this solicitation, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by this Contract or not providing proof of same in a form

acceptable to OGS, 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 People of the State of New York or the New York State Office of General Services for lost profits or any other damages.

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) Commercial Crime coverage on money, securities, or property other than money and securities, including property in your care, custody or control with a limit of not less than \$1,000,000. The coverage shall include all employees including contract and temporary, whether identified or not, acting alone or in collusion with others. A joint loss payable endorsement shall be attached naming OGS as loss payee to any loss arising out of this contract.
- d) 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.

- e) 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.
- f) Cyber Liability insurance written at a limit of not less than \$1,000,000 per occurrence with respects to the contractor's web based computer system to be used for claims processing. Coverage 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.
- g) WORKERS' COMPENSATION / DISABILITY INSURANCE:

Prior to any contract resulting from this RFP becoming effective, Contractor must submit proof that they have the workers' compensation and disability benefits coverage required by the New York State Workers' Compensation Law, or proof that they are legally exempt from obtaining such coverage. Proof of compliance must be demonstrated in accordance with the requirements set forth by the New York State Workers' Compensation Board (An instruction manual clarifying the Workers' Compensation Law requirements is available to download at the Workers' Compensation Board's website, www.wcb.ny.gov. Once you are on the website, click on Employers/Businesses, then Business Permits/Licenses/Contracts; from there, click on Instruction Manual for Businesses Obtaining Permits/Licenses/Contracts.) Contractor shall notify the Office of General Services, Financial Administration Contracts Unit, at least thirty (30) days prior to material change or cancellation of such coverage.

If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.

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.

6.4 Tax and Finance Clause

TAX LAW § 5-A (Attachment 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 proposal 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 proposal 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.nystax.gov>

6.5 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 OGS 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 versus 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. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establishes goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

By submission of a bid or proposal in response to this solicitation, the Bidder/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.

Bidder further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will,

upon request, submit to OGS, 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 (MWBEs)

A. MWBE Contract Goals

For purposes of this procurement, OGS hereby establishes a goal of 20% for Minority-owned Business Enterprises (MBE) participation and 10% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total Contract MWBE goal of 10%. 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. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/frontend/diversityusers.asp>. Questions regarding compliance with MWBE participation goals should be directed to the OGS Office for Minority and Women Owned Business Enterprises Designated Contacts identified on the front page of the solicitation.

A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract (see clause E below) and ensure that the MWBEs utilized under the Contract perform commercially useful functions (see clause B below). Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation.

B. Commercially Useful Function Requirement

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a 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.

C. By submitting a bid or proposal, Bidder/Contractor agrees to the following:

1. Breach of Contract and Liquidated Damages

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 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.

2. Utilization Plan

a. Bidders are required to submit a completed 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, a description of the Commercially Useful Function the Contractor intends the MWBE to perform to meet the goals on the State Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of a State Contract that the Contractor intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that the utilization of MWBEs that do not perform commercially useful functions may not be counted as meeting the MWBE goals of the Contract; and, 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. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

b. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (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 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 OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, 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.

3. OGS may disqualify a Bidder's bid/proposal 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 OGS determines that the Bidder has failed to document good faith efforts.

D. Request for Waiver

1. A Bidder who is able to document good faith efforts to meet the goal requirements, as set forth in clause E below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation, 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 OGS at that time, the provisions of clauses C(2)(b& c) and C(3) above will apply.

2. Contractor 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 OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

3. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the OGS Office for Minority and Women Owned Business Enterprises Designated Contacts identified on the front page of the solicitation for guidance.

E. Required Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of required good faith efforts shall include the following:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.

(2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

(3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

(4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

(5) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.

(6) Other information deemed relevant to the request.

F. Monthly MWBE Contractor Compliance Report

Contractors are 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. If a 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. More information about the NYSCS will be provided if Bidder is awarded a 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>.

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6.6 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each proposal will be held in confidence and details of any proposal 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 PROPOSAL 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 PROPOSAL 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

6.7 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 OGS 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 OGS.
- 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.
- OGS interpretation of specifications shall be final and binding upon the Contractor.
- The Commissioner of OGS 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 OGS.

- **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, OGS 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** – OGS 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, OGS 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 OGS 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 OGS, 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.
- OGS reserves the right to reject and bar from the facility any employee hired by the Contractor.

6.8 Contract Terms

All provisions and requirements of Appendix A Standard Clauses for New York State Contracts (January 2014), 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.

6.9 Extent of Services

OGS 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.

6.10 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. 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 10% 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 OGS Bureau of Risk Insurance and Fleet Management or their designee, Governor Nelson A. Rockefeller Empire State Plaza, 39th Floor, Albany, New York 12242, 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 Director of Technical Services may require concerning the proposed subcontractor's ability and qualifications.

6.11 Procurement Rights

The State of New York reserves the right to:

- A. Reject any and all proposals received in response to this Solicitation.
- B. 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.
- C. Correct Proposers' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Proposer.
- D. 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.
- E. Utilize any and all ideas submitted in the proposals received.
- F. Negotiate with Proposers responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.

- G. 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.
- H. Waive any non-material requirement not met by all Proposers.
- I. Not make an award from this Solicitation.
- J. Make an award under this Solicitation in whole or in part.
- K. Make multiple contract awards pursuant to the Solicitation.
- L. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
- M. Seek clarifications of proposals.
- N. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB/RFP.
- O. Prior to the bid opening, amend the IFB/RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- P. Waive any requirements that are not material.
- Q. 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.

6.12 Debriefings

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After contract award, OGS shall, upon request, provide a debriefing to any bidder that responded to the IFB or RFP, regarding the reason that the proposal 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>

6.13 Termination

A) Termination

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

In addition, OGS 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, OGS 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 OGS 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.

B) Procurement Lobbying Termination

The 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, OGS may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

6.14 NYS Vendor Responsibility

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 <https://portal.osc.state.ny.us/Enrollment/login> 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.

6.15 Extension of Use

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

6.16 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.

6.17 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.

6.18 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.

6.19 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.

6.20 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_management/issues_guidance.htm

Form to be completed: http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf

6.21 MERCURY-ADDED CONSUMER PRODUCTS:

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information:

<http://www.dec.ny.gov/chemical/8512.html>.

6.22 Consultant Contracts

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as “*contracts entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*” (“covered consultant contract” or “covered consultant services”). The amendments also require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget and the Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered contracts awarded on and after such date.

To meet these new requirements, the Contractor agrees to complete:

Form A - the Contractor’s Planned Employment Form upon bid/quote submittal.

Form B - the Contractor’s Annual Employment Report throughout the term of the Contract by May 1st of each year. The following information must be reported:

For each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such contract was in effect during such prior State fiscal year:

1. Total number of employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such employees.
3. Total compensation paid to all employees that performed consultant services under such Contract.*

(Information must be reported on the Contractor’s Annual Employment Report (Form B) or other format stipulated by OGS.)

***NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.**

Contractor agrees to simultaneously report such information via Form B to the Department of Civil Service, the Office of the State Comptroller and the Office of General Services as designated below:

Department of Civil Service
Alfred E. Smith Office Building
80 South Swan Street
Albany, NY 12239

NYS Office of the State Comptroller
Bureau of Contracts
110 State St, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

NYS Office of General Services
Financial Administration-Purchasing Unit
32nd Floor – Corning Tower
Empire State Plaza
Albany, New York 12242

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

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.

Appendix B - Required Forms

Contractor Information

SOLICITATION NUMBER 1901

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).

(Authorized Signature)

(Date)

(Print Name)

(Title)

(Company Name)

(Federal I.D. Number)

(NYS Vendor I.D. Number)

(Address)

(City, State, Zip)

(County)

_____ Ext. _____
(Telephone Number)

_____ Ext. _____
(Toll Free Phone)

(Fax Number)

(Toll Free Fax Number)

(E-mail)

New York State Small Business	Circle One:	Yes	No
New York State Certified Minority Owned Business	Circle One:	Yes	No
New York State Certified Woman 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

BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Pursuant to Procurement Lobbying Law (SFL §139-j)

A. 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?

_____ YES _____ NO

If yes, please answer the following question:

B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

_____ YES _____ NO

C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

_____ YES _____ NO

If yes, please provide details regarding the finding of non-responsibility:

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-Responsibility:
(add additional pages if necessary)

D. Has any 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?

_____ YES _____ NO

If yes, please provide details:

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding:
(add additional pages if necessary)

**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 circle):

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

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

No Yes

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.

Print Name _____

Signature _____

Title: _____

Date: _____

Contractor Company 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.

**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: Contractor Name: Contract Start Date: / /	Agency Code: Contract Number: 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:
Preparer's Signature:
Date Prepared: / /
(Use additional pages, if necessary)

Phone #:

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

NYS Department of Taxation and Finance - FORMS

CONTRACTOR CERTIFICATION (ST-220-TD 12/11)
CONTRACTOR CERTIFICATION TO COVERED AGENCY
(ST-220-CA 12/11)



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)

ST-220-TD

(12/11)

For information, consult Publication 223, *Questions 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 or state agency	Contract number or description	Estimated contract value over the full term of 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.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

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)*. See *Need help?* for more information on how to obtain this publication.

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 Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



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, call the information center.

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.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

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)

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. _____



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

ST-220-CA

(12/11)

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

For information, consult Publication 223, *Questions 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 ST-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. 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.

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).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
:
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.

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 406(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 Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?

Visit our Web site at www.tax.ny.gov
- get information and manage your taxes online
- check for new online services and features
Telephone assistance
Sales Tax Information Center: (518) 485-2880
To order forms and publications: (518) 457-5431
Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082
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, call the information center.

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 Appendix B 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:	Printed or Typed Name:
Title:	Date:

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Appendix C

Sample Contract

Solicitation No. 1901

SAMPLE

STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT FOR
Automobile Claims Administration
FOR THE BUREAU OF RISK, INSURANCE AND FLEET MANAGEMENT
IN NEW YORK STATE
WITH
(CONTRACTOR)
CONTRACT #OGS01-C00XXXX-1140000

THIS AGREEMENT, made this ____ day of _____, 2015 by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "Commissioner", "OGS" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at _____.

WITNESSETH:

WHEREAS, the OGS is responsible for the Automobile Claims Administration to process and service claims arising out of the use of motor vehicles owned by or operated on the behalf of the People of the State of New York, and in fulfilling its responsibility deems it necessary to obtain Automobile Claims Administration therefore, and

WHEREAS, OGS 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 Automobile Claims Administration, 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:

1. CONSIDERATION

OGS shall pay the Contractor for all Automobile Claims Administration 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.

2. TERM

This Agreement shall commence July 1, 2015 and will be in effect for five (5) years, unless sooner terminated as herein specified.

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. 1901, 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.

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

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, OGS 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, OGS 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 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.

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 OGS 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.

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
- (ii) This contract agreement
- (iii) Appendix B – RFP Solicitation #1901 including Addenda
- (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 OGS 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

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. 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 OGS 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 OGS under this Agreement.

- Contractor shall supply OGS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as OGS's notification policy.
- Contractor must encrypt any database fields and backup 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 OGS.
- Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from OGS.
- In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify OGS and commence an investigation in cooperation with OGS 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 OGS following the discovery that OGS's system security has been breached.
- Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from OGS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the Division of Homeland Security and Emergency Services, Office of Cyber Security and Critical Infrastructure Coordination, the Department of State Division of Consumer Protection, 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.

21. MWBE/EEO

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

I. General Provisions

- 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 clause VII of this section or enforcement proceedings as allowed by the Contract.

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

- C. Form EEO 101 - 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.

III. 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 clause III-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>. Questions regarding compliance with MWBE participation goals should be directed to the OGS Office for Minority and Women Owned Business Enterprises.
- C. 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.
- D. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VI below) and ensure that the MWBEs utilized under the Contract perform commercially useful functions (see clause III.D below).
- E. Commercially Useful Function Requirement Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a 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.

IV. MWBE Utilization Plan

- A. Contractor certifies that it has submitted a completed 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 clause III-A of this Section.
- 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 completed 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. Request for Waiver

- A. If the Contractor, after making good faith efforts, as set forth in clause VI below, 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 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.
- C. **Prior to submission of a request for a partial or total waiver, Contractor shall speak to the OGS Office for Minority and Women Owned Business Enterprises for guidance.**

VI. Required Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of required good faith efforts shall include the following:

- (1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- (2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- (3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- (4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- (5) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
- (6) Other information deemed relevant to the request.

VII. 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 NYSPro 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 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 clause VIII below.

VIII. Breach of Contract and Liquidated Damages

- A. In accordance with Executive Law Section 316-a and 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.
- 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>
November 2014

SAMPLE

22. CONTRACTOR RESPONSIBILITY

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.

CONTRACT NO. OGS01-C00XXXX-1140000

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)

THE PEOPLE OF THE STATE OF NEW YORK

By: _____

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

By: _____

Name:
Title:
Date:

APPROVED AS TO FORM

Eric Schneiderman
Attorney General

APPROVED

Thomas P. DiNapoli
State Comptroller

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: _____

Appendix A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

[Text not included at this time because it is included elsewhere in the solicitation. Will be added when contract is finalized]

Appendix B

Request for Proposal

SAMPLE

Appendix C

Contractor's Proposal

SAMPLE

Appendix D

OGS Security Requirements

OGS SECURITY REQUIREMENT

- A. This clause is applicable to all contracts that include information technology resources or services in which the Contractor must have physical or electronic access to sensitive OGS information. For the purpose of this clause, the term “Sensitive” is defined by the guidance set forth in the NYS Information Security Policy (P03-002), issued by the NYS Office of Information Services (ITS). There is a presumption that all information technology systems contain some sensitive information.

Information technology resources include, but are not limited to, system software, application software, and information (data). Information technology services include, but are not limited to, the management, operation (including input, processing, transmission, and output), maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. The Contractor shall be responsible for implementing sufficient information technology security to reasonably prevent the compromise of OGS IT resources for all of the contractor’s systems that are interconnected with an OGS network, as well as for OGS systems that are operated by the Contractor.

- B. All Contractor personnel performing under this contract, and all Contractor equipment used to process or store OGS data or to connect to OGS networks, must comply with the requirements contained in:

- The NYS Information Security Policy (P03-002) To obtain a copy, contact ITS http://www.its.ny.gov/policy/Enterprise_Information_Security_Policy_v4.0.pdf
- NYS information technology policies, standards and best practice guidelines ; <https://www.its.ny.gov/policy/Enterprise%20Remote%20Access%20v1.0.pdf> and
- OGS information security policies, procedures, and standards.

- C. For all Contractor-owned systems for which performance of the contract requires interconnection with an OGS network or that OGS data be stored or processed on them, the Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall be submitted to OGS prior to the commencement of any work under the contract. It shall describe the processes and procedures that will be followed to ensure the appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall also describe those parts of the contract to which this clause applies. The plan shall meet IT security requirements in accordance with NYS policies and procedures that include, but are not limited to:

- The NYS Information Security Policy (P03-002) To obtain a copy, contact CSCIC http://www.its.ny.gov/policy/Enterprise_Information_Security_Policy_v4.0.pdf
- NYS information technology policies, standards and best practice guidelines ; <https://www.its.ny.gov/policy/Enterprise%20Remote%20Access%20v1.0.pdf> and
- OGS information security policies, procedures, and standards.

- D. The Contractor shall incorporate this clause in all subcontracts that meet the conditions in paragraph (A) of this clause.

Appendix E
BACKGROUND CHECKS

BACKGROUND CHECKS

Requirements

Requirements of this clause apply to the successful bidder (Contractor) of the contract who will be performing on-site work for OGS under the contract resulting from this solicitation. The cost to the Contractor for performing requirements of this section, shall be included in the bidder's response to this solicitation.

Definitions

For purposes of this clause, the following definitions apply:

- (1) On-Site: "On-site" refers to any State-owned or leased space open to the public or at which State business operations are conducted.
- (2) Suitability: "Suitability" refers to identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract at OGS on-site locations without undue risk to the interests of the State.
- (3) Suitability determination: A "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on-site without undue risk to the interests of the State.

Applicability

- (1) Contractors shall perform background checks and make suitability determinations on contractor employees before the individual employees can perform on-site contract services for the Office of General Services.
- (2) Contractor shall maintain a continuous list of background checks and suitability determinations noted above, and shall provide this list to the Facility Manager prior to the contract commencement date. The list shall be updated and resubmitted to the Facility Manager as changes occur, continually keeping the Facility Manager updated.
- (3) The Commissioner of General Services, or his designee (the "Commissioner"), on a case-by-case basis, may, either temporarily or permanently, waive the requirements of this clause, in whole or in part, if they determine in writing that background checks and suitability determinations are not necessary at a specific location, or for a specific individual, in order to protect the State's interests.

Background Check

- (1) The Contractor is responsible, at its own expense, for completing background checks and making suitability determinations on its employees prior to the employee beginning on-site work. Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a contractor employee clearance to secured areas. Contractors are required to maintain records of background checks and suitability determinations for the term of the contract, and to make them available to the State when requested.

- (2) At a minimum, the background check and suitability determination must include an evaluation of:
- (i) Verification that the individual is not listed on a national watched person database. The following link has information about a data available. <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>. The following link has a PDF file of a list of SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>
 - (ii) Criminal History checks (using a national database that contains criminal histories and supplement this search by checks of NYS Office of Court Administration and comparable searches of states where the person has lived, worked or attended school during the past 5 years) Or by obtaining the record of convictions from NYSOCA directly and from their equivalents from other states where the person might have lived, worked or attended school during the last 5 years;
 - (iii) DMV driving records;
 - (iv) Social Security Number trace;
 - (v) Verification of U.S. citizenship or legal resident status; and
 - (vi) Residence (past 3 years) (should be requested on employment application to compare against data from DMV license and other searches for verification);

Background Check Guidelines

- (1) In making a suitability determination, the contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the State:
- (i) Any loyalty or terrorism issue;
 - (ii) Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);
 - (iii) Dishonorable military discharge;
 - (iv) Felony and misdemeanor offenses;
 - (v) Drug manufacturing/trafficking/sale;
 - (vi) Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);
 - (vii) Criminal sexual misconduct;
 - (viii) Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);
 - (ix) Illegal use of firearms/explosives; and
 - (x) Employment related misconduct involving dishonesty, criminal or violent behavior.
- (2) The contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:
- (i) The nature, extent and seriousness of the conduct;
 - (ii) The circumstances surrounding the conduct;
 - (iii) The frequency and recency of the conduct;

- (iv) The individual's age and maturity at the time of the conduct;
- (v) The presence or absence of rehabilitation and other pertinent behavior changes;
- (vi) The potential for pressure, coercion, exploitation, or duress;
- (vii) The likelihood of continuation of the conduct.
- (viii) How, and if, the conduct bears upon potential job responsibilities; and
- (ix) The employee's employment history before and after the conduct.

Each suitability determination should be documented in a narrative. If negative items are mitigated by subsequent passage of time or completion of substance abuse programs this rationale should be included in the narrative. A negative suitability determination must be supported by a finding that the adverse information has a direct bearing on the potential job duties or that it is deemed sufficiently serious to bar the employee from a State site.

Employee Removal.

Whenever a contractor becomes aware that any employee working at an on-site location under an OGS contract becomes an unacceptable risk to the State; the contractor shall immediately remove that employee from the site, notify the Commissioner that such a removal has taken place, and replace them with a qualified substitute. If the approval of the Commissioner was initially required for the removed employee, Commissioner approval is required for the replacement employee.

Commissioner Notification

Prior to commencement of on-site contract performance, the contractor shall notify the Commissioner that the background checks and suitability determinations required by this clause have been completed for affected individuals.

Attachment 1

Cost Proposal

Cost Proposal Form

All Proposers must submit fixed amounts for each one year term that is totally inclusive of all costs and expenses to be incurred in the performance of any contract resulting from this Solicitation.

Item A

ACA Services	Fixed Amount
First one (1) year term	\$
Second one (1) year term	\$
Third one (1) year term	\$
Fourth one (1) year term	\$
Fifth one (1) year term	\$

Grand Total five (5) year Cost Proposal, Item A = \$ _____

(Company Name)

Name: _____
(Signature)

By: _____
(Print)

Title: _____

Date: _____

Attachment 2

Proposal Submission Checklist

Attachment 2 - Proposal Submission Checklist

Section	Checklist Item	Check Box	Page # in Submission
Attachment 1	Cost Proposal Form - 4 Originals and 1 CDR	<input type="checkbox"/>	
	Technical Proposal - 4 Originals and 1 CDR	<input type="checkbox"/>	
Attachment 2	Proposal Submission Checklist	<input type="checkbox"/>	
Section 2.2.A	Cover Letter	<input type="checkbox"/>	
Section 1.5	Proposer Qualification Certifications	<input type="checkbox"/>	
Section 2.2.F.	Proposer References	<input type="checkbox"/>	
Section 2.2.E	Personnel/Titles	<input type="checkbox"/>	
Exhibit A	Confidentiality Form	<input type="checkbox"/>	
Appendix B	Administrative Proposal - 3 Originals and 1CDR		
Appendix B	Contractor information Page	<input type="checkbox"/>	
Appendix B	Corporate Acknowledgement (must be notarized)	<input type="checkbox"/>	
Appendix B	Offerer's Affirmation of Understanding of and Agreement with, pursuant to NYS Finance Law §139-j (3) and §139-j (6) (b)	<input type="checkbox"/>	
Appendix B	Offerer Disclosure of Prior Non-Responsibility Determinations	<input type="checkbox"/>	
Appendix B	Offerer's Certification of Compliance with State Finance Law §139-k (5)	<input type="checkbox"/>	
Appendix B	Employee Information to be reported by certain Consultant Contractors	<input type="checkbox"/>	

Appendix B	Contractor Certification - ST-220 TD	<input type="checkbox"/>	
Appendix B	Contractor Certification to Covered Agency - ST-220-CA	<input type="checkbox"/>	
Appendix B	MacBride & Non-Collusive Bidding Certification	<input type="checkbox"/>	
Appendix B	Diesel Emission Reduction Act	<input type="checkbox"/>	
Appendix B	Small Business Enterprise Certification	<input type="checkbox"/>	
RFP Section 6.3	Workers Compensation. / Disability Insurance	<input type="checkbox"/>	
RFP Section 6.3	Commercial General Liability Insurance	<input type="checkbox"/>	
RFP Section 6.5	EEO 100 Staffing Plan and MWBE Utilization form (can be found at: http://www.ogs.ny.gov/mwbe/Forms.asp	<input type="checkbox"/>	
RFP Section 6.14	Vendor Responsibility Questionnaire (can be found at http://www.osc.state.ny.us/vendrep/vendor_index.htm)	<input type="checkbox"/>	
	Signed copies of all addenda released for this solicitation	<input type="checkbox"/>	

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

Exhibit A

Security/Confidentiality

Security/Confidentiality

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 during the Contract term or for a period of five (5) years thereafter 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 for a period of five (5) years. 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 OGS BRIM on behalf of the State of NY RFP 1901, each employee of the contractor or subcontractor(s) shall certify by signature below their acknowledgement and acceptance of the above Security/Confidentiality requirements as well as the Information Security Policy. Additionally, by signature and submission of this document by an authorized company official, the contractor certifies compliance with these clauses.

Employee A

Printed Name:

Job Title assigned
for this Project:

Signature

Date:

Employee B

Printed Name: _____
Job Title assigned
for this Project: _____
Signature _____
Date: _____

Employee C

Printed Name: _____
Job Title assigned
for this Project: _____
Signature _____
Date: _____

Employee D

Printed Name: _____
Job Title assigned
for this Project: _____
Signature _____
Date: _____

Employee E

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: Wendy L. Fioravanti