



**Office of  
General Services**

**REQUEST FOR QUOTE (RFQ) NUMBER 1974 SOLICITED BY THE  
NEW YORK STATE OFFICE OF GENERAL SERVICES  
ON BEHALF OF THE NYS BOARD OF ELECTIONS  
DIVISION OF ELECTION LAW ENFORCEMENT  
FOR  
PROCESS SERVERS**

**BID DUE DATE: DECEMBER 6, 2016, 2:00PM**

**ISSUE DATE: OCTOBER 18, 2016**

**Designated Contact:**

Matt Courcelle

Voice: 518-474-5981

E-mail: [matthew.courcelle@ogs.ny.gov](mailto:matthew.courcelle@ogs.ny.gov)

**Alternate Contact:**

Beth Maus

Same

E-mail: [beth.maus@ogs.ny.gov](mailto:beth.maus@ogs.ny.gov)

**Alternate Contact:**

Erin Datri

Same

E-Mail: [erin.datri@ogs.ny.gov](mailto:erin.datri@ogs.ny.gov)

## Table of Contents

<b>1. INTRODUCTION</b>	<b>4</b>
1.1 OVERVIEW	4
1.2 DESIGNATED CONTACT	4
1.3 MINIMUM PROPOSER QUALIFICATIONS	5
1.4 KEY EVENTS	5
<b>2. QUOTE SUBMISSION</b>	<b>6</b>
2.1 RFQ QUESTIONS AND CLARIFICATIONS	6
2.2 QUOTE FORMAT AND CONTENT	6
2.2.1 Technical Proposal	6
2.2.2 Quote Proposal	7
2.2.3 Administrative Proposal	7
2.3 INTENT TO SUBMIT A QUOTE	8
2.4 QUOTE PREPARATION	8
2.5 PACKAGING OF RFQ RESPONSE	8
2.6 INSTRUCTIONS FOR QUOTE SUBMISSION	8
<b>3. ADMINISTRATIVE INFORMATION</b>	<b>10</b>
3.1 ISSUING OFFICE	10
3.2 METHOD OF AWARD	10
3.3 PRICE	10
3.4 TERM OF CONTRACT	11
3.5 METHOD OF PAYMENT	11
3.6 PRICE ADJUSTMENT CLAUSE (ESCALATION/DE-ESCALATION)	11
3.7 ELECTRONIC PAYMENTS	12
3.8 PAST PRACTICE	12
3.9 EXCEPTIONS AND EXTRANEIOUS TERMS	13
3.10 DISPUTE RESOLUTION	13
3.11 EXAMINATION OF CONTRACT DOCUMENTS	13
3.12 PRIME CONTRACTOR RESPONSIBILITIES	14
3.13 GLOSSARY OF TERMS	14
3.14 RULES OF CONSTRUCTION	14
<b>4. SCOPE OF WORK</b>	<b>15</b>
4.1 INVESTIGATIONS AND ADMINISTRATIVE, SPECIAL, AND OTHER PROCEEDINGS	15
4.2 SERVICE OF PROCESS	15
4.3 TIME FRAME FOR SERVICE OF PROCESS	16
4.4 REGIONS	17
<b>5. CONTRACT CLAUSES AND REQUIREMENTS</b>	<b>18</b>
5.1 APPENDIX A / ORDER OF PRECEDENCE	18
5.2 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING	18
5.3 CONFIDENTIALITY	18
5.4 ETHICS COMPLIANCE	18
5.5 CONTRACTOR INSURANCE REQUIREMENTS	18
5.6 TAX AND FINANCE CLAUSE	20

5.7 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 **Error! Bookmark not defined.**

5.8 FREEDOM OF INFORMATION LAW / TRADE SECRETS..... 23

5.9 GENERAL REQUIREMENTS ..... 24

5.10 CONTRACT TERMS..... 25

5.11 SUBCONTRACTORS ..... 25

5.12 PROCUREMENT RIGHTS ..... 26

5.13 EXTENT OF SERVICES..... 27

5.14 DEBRIEFINGS ..... 27

5.15 TERMINATION..... 27

5.16 NYS VENDOR RESPONSIBILITY QUESTIONNAIRE ..... 27

5.17 NEW YORK STATE VENDOR FILE REGISTRATION..... 28

5.18 INDEMNIFICATION ..... 29

5.19 FORCE MAJEURE..... 29

5.20 ENCOURAGING USE OF NYS BUSINESSES ..... 29

5.21 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES ..... 30

Appendix A..... Standard Clauses for New York State Contracts

RFQ Appendix B.....Required Forms

RFQ Appendix C.....Sample Contract

Attachment 1.....Quote Proposal Form

Attachment 2.....Quote Proposal Submission Checklist

# 1. INTRODUCTION

---

## 1.1 OVERVIEW

The New York State Office of General Services (OGS), on behalf of the Chief Enforcement Counsel (CEC) Division of Election Law Enforcement of the New York State Board of Elections (BOE), intends to procure the assistance of a company to serve legal process and provide affidavits of service to the CEC.

The CEC annually brings multiple administrative enforcement proceedings and legal actions against candidates, treasurers of political committees, and others who violate provisions of the Election Law. Actions are generally brought as special proceedings via order to show cause and require that service of process be effectuated and proof of service provided with court-ordered time frames. Such actions typically result in judgments, which also must be served on respondents with notice of entry. Administrative enforcement proceedings are brought by service of a Notice of Hearing, Report of CEC, and copies of relevant statutes, all of which must be promptly served and proof of service provided as specified by the CEC. Finally, as part of its investigations, the CEC issues subpoenas that must be served on witnesses. The successful bidder will be awarded a contract to provide such services statewide.

OGS is soliciting quotes only from New York State Certified Minority/Women Owned Business Enterprises (M/WBE's), Service Disabled Veteran Owned Business (SDVOB), and New York State Small Businesses (SBE's) in accordance with Section 163(6) of the State Finance Law. Award value(s) under this RFQ will be capped at \$200,000.00.

## 1.2 DESIGNATED CONTACT

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

Matthew Courcelle, Contract Management Specialist I  
NYS Office of General Services  
Financial Administration / Agency Procurement Office  
Corning Tower, 32<sup>nd</sup> Floor, ESP  
Albany, New York 12242  
Voice: 1-518-474-5981  
Email: [matthew.courcelle@ogs.ny.gov](mailto:matthew.courcelle@ogs.ny.gov)

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

Beth Maus, Contract Management Specialist II  
NYS Office of General Services  
Financial Administration / Agency Procurement Office  
Corning Tower, 32<sup>nd</sup> Floor, ESP  
Albany, New York 12242  
Voice: 1-518-474-5981  
Email: [beth.maus@ogs.ny.gov](mailto:beth.maus@ogs.ny.gov)

Erin Datri, Contract Management Specialist III  
NYS Office of General Services  
Financial Administration / Agency Procurement Office  
Corning Tower, 32<sup>nd</sup> Floor, ESP  
Albany, New York 12242  
Voice: 1 518- 474- 5981  
Email: [erin.datri@ogs.ny.gov](mailto:erin.datri@ogs.ny.gov)

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

Anuola Surgick, Compliance Specialist I  
NYS Office of General Services  
Minority and Women-Owned Business Enterprises  
Corning Tower, 29<sup>th</sup> Floor, ESP  
Albany, NY 12242  
Voice: 1-518-486-9284  
Email: [anuola.surgick@ogs.ny.gov](mailto:anuola.surgick@ogs.ny.gov)

### 1.3 MINIMUM PROPOSER QUALIFICATIONS

Proposers bidding on this solicitation are advised that it is the State's intent is to ensure that only responsive, responsible, qualified and reliable Contractor(s) enter into a contract to perform the work as defined in this RFQ.

The following minimum qualifications must be met by each proposer:

- Proposer must be a New York State Certified Minority/Women Owned Business Enterprises (M/WBE), Service Disabled Veteran Owned Business (SDVOB), or a New York State Small Business (SBE)
- Proposer must have at least five (5) years' experience in service of process throughout New York State and all of its 62 Counties. Requisite experience must include comparable scope, services and timeline as set forth in Section 4 – Scope of Work, or the bidder is to supply information confirming that senior management personnel of proposing firm has been actively and normally engaged in service of process throughout New York State and all of its 62 Counties cumulatively for the Proposer and/or another firm or firms in which they also served as senior management personnel for at least the past five (5) years. Provided, however, that in the case of the latter situation, the Proposer must have been in business for at least six (6) months. CEC's determination as to whether subject personnel serve or served in senior management positions shall be final.
- New York City Licensure Requirement:

The City of New York requires all persons who serve process within its five (5) boroughs (Manhattan, Brooklyn, Bronx, Staten Island, and Queens) to be licensed through the NYC Department of Consumer Affairs. (Refer to: {Rules of City of NY Dept. of Consumer Affairs [6 RCNY] § 2-231 et seq. Administrative Code of City of NY §20-403 et seq.}) Any subcontractor used in the City of New York must be in compliance of this provision.

### 1.4 KEY EVENTS

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

Action	Date	Time
OGS issues Request for Proposal RFQ #1974	October 18, 2016	
Intent to Submit A Quote	November 10, 2016	
Deadline for Submission of Bidder Questions	November 28, 2016	
OGS Issues a Response to Written Questions (estimated)	December 1, 2016	
Quote Due Date to OGS	December 15, 2016	2 : 00 pm
Contract Start Date	March 27, 2017	

## **2. QUOTE SUBMISSION**

---

### **2.1 RFQ 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:

Matt Courcelle, Contract Management Specialist I  
OGS Division of Financial Administration/Agency Procurement Office  
32nd Floor, Corning Tower, ESP  
Albany, NY 12242  
Phone: 1-518-474-5981  
E-mail: [matthew.courcelle@ogs.ny.gov](mailto:matthew.courcelle@ogs.ny.gov)

All questions must cite the particular page, section, and paragraph number, where applicable. Please submit questions as early as possible following receipt of the RFQ. The final deadline for submission of any questions/clarifications regarding this RFQ is listed in Section 1.4 – Key Events. Questions received after the deadline 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 RFQ, as necessary.

### **2.2 QUOTE 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.

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

#### **2.2.1 Technical Proposal**

##### **2.2.1.1 Cover Letter**

The cover letter must confirm that the proposer understands all the terms and conditions contained in this RFQ and will comply with all the provisions of this RFQ. Further, should the contract be awarded to your company, you would be prepared to begin services on the date indicated in Section 1.4 – Key Events. The cover letter must also include the full contact information of the Proposers Representative that OGS shall contact regarding the bid. 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 and address, telephone number, business number and principles of each proposed subcontractor including geographical area or areas where services are available and per Section 5.11 - Subcontractors.

### **2.2.1.2 Qualifications**

Proposers must submit sufficient information to prove their ability to meet the minimum qualifications as set forth in Section 1.3.

### **2.2.1.3 Experience**

- Indicate the number of consecutive year's bidder has been active in the business of process serving. Provide a current list of references with contact information and a description of contract services (a minimum of three references, including contact information, is required).

### **2.2.1.4 Staffing and Operational Plan**

- Staffing and operational plan for this contract, including use of any subcontractors. Include the names of employees or subcontractors responsible for this contract, their role in servicing the contract, their function in the company, their title, and number of years with the Proposer's firm. (Refer to Section 5.11 – Subcontractors)
- Details of how the bidder intends to provide services in all 62 counties in the state.

### **2.2.2 Quote Proposal**

Proposer shall submit a completed Attachment 1 - Quote Proposal Form in a separately sealed package within the proposal submission and must be clearly identified as the cost proposal. Each item must be complete with no lines omitted. Proposer shall not provide alternative pricing or deviate from the Quote Proposal Form. Alternative pricing methodologies will not be considered and may result in the rejection of the quote.

### **2.2.3 Administrative Proposal**

- All other required completed forms included in RFQ Appendix B.
- Attachment 2 Proposal Submission Checklist
- Signed addenda (if any)
- Important Notes:
  - Insurance – Proposers are reminded of the insurance requirements as described in Section 5.5. 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 5.7.
  - Vendor Responsibility - Proposers are reminded of the requirement as described in Section 5.16, 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 quote proposal. 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 either at the time the proposal is submitted or within thirty calendar days of being advised of tentative award. Failure to complete the registration process and be approved by the New York State Department of State within that thirty day time period may result in a rejection of the proposal.

## 2.3 INTENT TO SUBMIT A QUOTE

Vendors who wish to submit a quote **must** register their “Intent to Submit a Quote” with OGS by sending notice to Matthew Courcelle, Contract Management Specialist I, via email [matthew.courcelle@ogs.ny.gov](mailto:matthew.courcelle@ogs.ny.gov) . Vendors shall include their company name, address, phone, fax, contact name, title and email address. Vendors must register no later than the date and time listed in Section 1.3 – Key Event Dates. Only registered vendors will be allowed to submit proposals for this RFQ. Also, only registered vendors will receive updates or responses to questions regarding this RFQ. By registering their Intent to Submit a Quote, the vendor is not obligated to submit a bid. Vendors assume sole responsibility for timely receipt of their intent to submit.

## 2.4 QUOTE PREPARATION

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

## 2.5 PACKAGING OF RFQ RESPONSE

The Technical, Cost, and Administrative proposals (See Section 2.2) should be separated and identified within the submission package as follows:

Technical – One original and four exact copies, each one tabbed in 3 ring binders. No overt statements about cost shall be included in the Technical Proposal.

Cost – Four originals and one exact copy of Attachment 1 – Quote Proposal Form clearly marked “Cost Proposal” in a separate sealed envelope.

Administrative - Four originals and one exact copy

All proposal 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 – 1974
- Proposal Due Date and Time: (as indicated in Section 1.4 - Key Events)
- Proposal for Process Servers

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

## 2.6 INSTRUCTIONS FOR QUOTE SUBMISSION

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

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

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

OGS Financial Administration, Agency Procurement Office  
Empire State Plaza, Corning Tower, 32nd Floor  
Albany, NY 12242  
Attn: Matthew Courcelle  
RFQ #1974

**E-MAIL OR FAX QUOTE 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. 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.

The received time of bids will be determined by the clock at the above noted location.

**Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, or (ii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event will the Commissioner be under any obligation to accept a Late Bid.**

**The basis for any determination to accept a Late Bid shall be documented in the procurement record.**

Bids must remain open and valid for sixty (60) 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 sixty (60) 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 arrival.** 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 RFQ is being released by the New York State Office of General Services, Division of Financial Administration on behalf of the New York State Board of Elections.

#### **3.2 METHOD OF AWARD**

One award shall be awarded under this solicitation to the responsive and responsible bidder affording the best value to the State.

Upon receipt of quotes, OGS and BOE will review all offers for quality, cost, and efficiency. Best value will be based upon how well the vendor understands the requirements of this project, the experience and skills of the staff to be assigned to work on this project, the proposed solution in providing statewide services, and the overall proposed cost of services. Reference checks may be conducted. The bidder will be responsible for the availability of the references.

Upon determination of the best value proposer, a Contract Agreement, a sample of which is attached to the RFQ as Appendix C - Sample Contract, will be completed with the successful bidder's information and appended to this RFQ and the successful bidder's bid to form the contract between the parties. This contract will be forwarded to the successful bidder for execution and returned to the Issuing Office to be processed for all necessary signatures and State approvals. Upon final approval, a fully executed copy will be forwarded to the awarded Contractor.

The resultant contract will be established within the discretionary authority of BOE/CEC and shall not exceed \$200,000.00. Services performed beyond this amount will not be compensated.

#### **3.3 PRICE**

The prices quoted shall be inclusive of all costs including travel, licenses, insurance, administrative, and other ancillary costs. For the purposes of this contract, full service shall mean that the Contractor's bid price includes: all labor and equipment cost; reporting or other requirements; all overhead costs and profit. Details of service not explicitly stated in these specifications, but necessarily attendant thereto are deemed to be understood by the Contractor and included herein.

Vendors must submit their cost using Attachment 1 marked "Quote Proposal Form." Vendors must provide pricing (or identify no charge) for all items on the Quote Proposal Form.

The CEC anticipates bringing more proceedings in some areas, such as the New York City / Metro Region, than others. The estimated quantities used on the Quote Proposal Form are intended to weight the regional prices based on this history. Upon submission of a final attempt(s) of service a flat rate of \$25 will be payable to the Contractor; however, no attempt fee is payable in addition to a service fee where service is eventually effectuated.

CEC expects that the bill rates proposed shall be competitive and reflect the current marketplace for similar services in New York. The Contractor warrants that pricing offered to the CEC is the same as or lower than that offered to its customers who are similarly situated with respect to service of process.

The Contractor agrees that from the effective date of the contract until contract termination, the rates charged by the Contractor and paid for by BOE will be equal to or lower than any rates provided by the Contractor to other customers for like services.

### 3.4 TERM OF CONTRACT

This contract will commence on March 27, 2017 and will be in effect for five (5) years or until the \$200,000.00 maximum value is reached, whichever comes first.

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 BOE' 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 RFQ 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 should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. See Section 5.15 – Termination.

### 3.5 METHOD OF PAYMENT

For the purposes of this contract, the Contractor shall submit an invoice at the end of each month for work completed during the month. This invoice will contain the Contract ID number (i.e.:BOE01-C00XXXX-1110000), Company FEIN; Vendor ID number (Statewide Financial System - SFS) and, either in its body or as an attachment, will state itemized work completed during that month. Such itemization must include at a minimum: date of service, name of person being served, location where service was performed/attempted.

Invoices shall be submitted to the Business Service Center (BSC) Accounts Payable Unit. Invoices will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

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

All invoices must be submitted for payment to:

The OGS Business Service Center  
Accounts Payable -or- [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov)  
Empire State Plaza Station  
P. O. Box 2117  
Albany, New York 12220 -0117

**Note:** A copy of all invoices and supporting documentation must be forwarded to CEC.

Chief Enforcement Council  
Division of Election Law Enforcement  
New York State Board of Elections  
40 North Pearl Street, Suite 5  
Albany, New York 12207

### 3.6 PRICE ADJUSTMENT CLAUSE (ESCALATION/DE-ESCALATION)

#### This clause shall apply to the Unit Price per Service of Process

The Contractor is to submit a proposal that will be fixed for one (1) year only. On each anniversary date of the contract, the Contractor will be granted an increase or decrease in their bid, dependent upon fluctuations in the

Consumer Price Index for All Urban Consumers (CPI-U), Northeast Region, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 2012. Visit their website at [www.bls.gov/ro2/home.htm](http://www.bls.gov/ro2/home.htm).

The 'base' month for determining adjustments will be the third month prior to the start date of the contract. The base month is fixed and will not be adjusted year to year. The adjustments will be based on the difference in the base month CPI for each applicable year and will become effective in the anniversary month. For example, if the contract is awarded in September 2016, the 'base' month will be June. If the contract allows for an adjustment after the first year, it would be based on the difference between the June 2016 CPI and the June 2017 CPI and become effective in September 2017.

The consumer price index is published around the middle of each month for the prior month (i.e. the January figure is not published until mid-February). The Contractor has the sole responsibility to request, in writing, a rate adjustment. This request must be received at the below address within three (3) months of the base month. To ensure timely delivery, certified mail is recommended. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the base month Consumer Price Index. Once approved, the Contractor will be notified in writing. Contractor shall not submit revised invoices until such notification, at which point an invoice may be submitted for any retroactive difference owed. **Request must be sent to the OGS Division of Financial Administration, Agency Procurement Office, 32<sup>nd</sup> Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242.**

Should a Contractor fail to submit the request and supporting documentation to the proper location within three (3) months of the applicable base month date, Contractor shall be deemed to have waived its right to any increase in price, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

### **3.7 ELECTRONIC PAYMENTS**

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

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

### **3.8 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.

### **3.9 EXCEPTIONS AND EXTRANEOUS TERMS**

The Issuing Office will consider all requests to waive any solicitation requirement. The Term “solicitation requirement” as used herein shall include any and all terms and conditions included in the solicitation documents. Proposers should be aware that failure to obtain a waiver of any proposal requirement in advance of submission, and/or inclusion of extraneous terms in the form of exceptions, assumptions, qualifiers, ranges, modifications, etc. with proposal submission, may result in rejection of Proposer’s proposal and disqualification from the RFQ 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 ‘Answers to Questions’ as identified in Key Events (if the response results in a change to the RFQ), or directly to the requesting vendor.

### **3.10 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.

During the term of the contract, if either party notifies the other of a dispute or dissatisfaction, the other party will make a good faith effort to solve or settle dispute amicably, including meeting with the other party to diligently attempt to reach a satisfactory result. In the event of a dispute, the parties will continue to fulfill their obligations hereunder during the dispute resolution process. The parties agree to proceed in good faith to avoid disputes, and resolve disputes that cannot be avoided at the lowest level possible. If party representatives are unable to resolve the dispute or reach a satisfactory result within twenty days of written notice of a dispute, the dispute will be referred to successive higher levels of each organization for final decision.

### **3.11 EXAMINATION OF CONTRACT DOCUMENTS**

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

### **3.12 PRIME CONTRACTOR RESPONSIBILITIES**

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

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

### **3.13 GLOSSARY OF TERMS**

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

“Contractor” shall mean a successful company(s) awarded a contract pursuant to this RFQ.

“Request for Proposal” or “RFQ” 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.

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

“Offeror,” “Proposer,” or “Bidder” shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the State pursuant to this RFQ.

“OGS” shall mean NYS Office of General Services

“BOE”, “Board” shall mean NYS Board of Elections

“CEC” shall mean Chief Enforcement Counsel of the State Board of Elections

### **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 RFQ, refer to this RFQ.

## 4. SCOPE OF WORK

---

### 4.1 INVESTIGATIONS AND ADMINISTRATIVE, SPECIAL, AND OTHER PROCEEDINGS

The Chief Enforcement Counsel (CEC) is empowered to investigate and enforce provisions of the Election Law and other statutes governing campaigns, elections and related procedures. As part of the investigative process, the CEC issues subpoenas and subpoenas *duces tecum*, which must be served on witnesses. As part of the enforcement process, the CEC may commence administrative enforcement proceedings before hearing officers to address various violations of the Election Law, including failure to file campaign finance disclosure statements. The CEC may also commence special proceedings in New York State Supreme Court to compel compliance with Election Law requirements, to recover penalties for violations, and for other purposes. Proceedings may be brought against candidates, treasurers of political committees, or others. Such proceedings often result in the court issuing judgments that must be served on the respondents.

CEC estimates 50 cases per year, and in the case of an administrative proceeding, this number would typically involve the service of process for the papers of two (2) persons of the initial papers and then possible subpoenas for witnesses if a hearing takes place. Then there is a possible Supreme Court proceeding which again may require service of the same two (2) people. In the case of lawsuits filed the service would be limited to the litigants.

The CEC anticipates bringing more proceedings in some areas, such as the New York City / Metro Region, than others. The estimated quantities used on the Quote Proposal Form are intended to weight the regional prices based on this history. Upon submission of a final attempt(s) of service a flat rate of \$25 will be payable to the Contractor; however, no attempt fee is payable in addition to a service fee where service is eventually effectuated.

Proposer must effectuate service of process throughout New York State and all of its 62 Counties, as well as out of State on a case by case basis, and must comply with all relevant federal, state, and local laws and rules, including, but not limited to the New York General Business Law, New York Civil Practice Law and Rules, and the New York Business Corporation Law.

### 4.2 SERVICE OF PROCESS

#### 1. Special Proceedings

Election Law § 16-116 allows special proceedings to be brought “upon such notice to such officers, persons, or committees as the court or justice shall direct, and shall be summarily determined.”

The language of special proceedings brought by the CEC may require more than one method of service as follows:

- a) by delivering a true copy of the order and attached petition to the respondents, or by delivering a true copy of the order and petition to a person of suitable age and discretion at the actual place of business, dwelling place, usual place of abode of the respondents or at the address appearing upon the instruments filed with the State Board of Elections designating the respondents as treasurers of their respective political committees, or as candidates; and
- b) by mail addressed to such respondents at the address appearing upon the instruments designating the respondents as candidates or as treasurers of their respective political committees
- c) by electronic or facsimile delivery addressed to retained legal counsel of such respondents.

The CEC handles the service required in Letter (b) or (c). The Contractor will handle only the service required in Letter (a) and promptly return an affidavit of service to the CEC.

**Note:** “Affix and Mail” service is not an allowable method of service by the Contractor in special proceedings. Service by the Contractor must be as expressly stated in Letter (a). Relative thereto, the CEC will provide the Contractor with the addresses necessary to effectuate service as outlined in Letter (a).

2. Administrative Enforcement Proceedings, Other Proceedings, and Subpoenas

Service of process in administrative enforcement proceedings, other proceedings commenced by the CEC, and subpoenas, and the method of service required, shall be conducted at the direction of the CEC in compliance with provisions of the Civil Practice Law and Rules, other applicable provisions of law, or any applicable directive of a Court.

3. Impropriety and Conflict of Interests

The Contractor and any subcontractor shall avoid the appearance of impropriety and conflicts of interest, and shall not render services in any matter in which he or she has a conflict of interest or is a party to the action. The Contractor and any subcontractor must disclose during the bidding process, and at any time thereafter if awarded the contract, the identities and offices of any elected officials who have or obtain any ownership interest in the Contractor or any subcontractor or who are employed by the Contractor or any subcontractor in any capacity.

4. Protection of Confidentiality

All papers provided to the Contractor and any subcontractor, and the contents thereof, are confidential. The Contractor and any subcontractor shall take affirmative steps to ensure that such confidentiality is maintained and to ensure that the information provided to the Contractor and any subcontractor by the CEC is used solely for the purpose of effectuating the required service of process.

### **4.3 TIME FRAME FOR SERVICE OF PROCESS**

1. Special Proceedings

There is typically a maximum of thirty (30) calendar days between the commencement of a special proceeding and the return date for the proceeding. This time frame could be modified by a court or by the CEC upon necessity. Usually on the same day the action is commenced, but sometimes a day later, the CEC will send via overnight delivery service to the Vendor a sufficient quantity of copies of the order to show cause and verified petition for all of the respondents named in the order to show cause, together with a list of respondents with their addresses (residential and/or mailing). As ordered by the court, the vendor will then typically have until a minimum of seven (7) days prior to the return date to effectuate service of process as required herein. The Vendor then must return a one (1) original and one (1) copy of the proof of service no later than three (3) days before the return date of the proceeding. In the event expedited service of process is required by the court or the CEC, this time frame may be modified.

2. Administrative and Other Proceedings, Subpoenas

Service of process in administrative and other proceedings commenced by the CEC and subpoenas, and the method of service required, shall be conducted at the direction of the CEC in compliance with provisions of the Civil Practice Law and Rules, other applicable provisions of law, or any applicable directive of a court.

### 3. Proof of Service

The Vendor will be required to promptly provide the CEC with a standard Affidavit of Service (standard to the industry) indicating that service was effectuated pursuant to above. In the event that service was not effectuated, the Vendor will so state the attempts in a separate affidavit as is required to receive a flat rate payment pursuant to Section 3.3 - Price

In the case of a proceeding brought against multiple respondents, the affidavit of service for a specific respondent must also contain that individual respondent’s name in the caption, e.g., “Risa S. Sugarman, Chief Enforcement Counsel of the New York State Board of Elections, Petitioner, against Jane Smith, Treasurer, Respondent.”

## 4.4 REGIONS

<u>North Country</u> 1. St. Lawrence 2. Franklin 3. Clinton 4. Essex 5. Jefferson 6. Lewis 7. Herkimer 8. Hamilton 9. Warren 10. Washington	<u>Hudson Valley</u> 30. Sullivan 31. Ulster 32. Orange 33. Dutchess 34. Putnam	<u>Capital Region</u> 54. Fulton 55. Saratoga 56. Montgomery 57. Schenectady 58. Schoharie 59. Albany 60. Rensselaer 61. Greene 62. Columbia
<u>Western NY</u> 11. Niagara 12. Erie 13. Orleans 14. Genesee 15. Wyoming 16. Monroe 17. Livingston 18. Wayne 19. Ontario	<u>New York City / Metro</u> 35. Rockland 36. Westchester 37. Bronx 38. Manhattan 39. Richmond 40. Queens 41. Kings 42. Suffolk 43. Nassau	
<u>Southern Tier</u> 20. Chautauqua 21. Cattaraugus 22. Allegany 23. Steuben 24. Yates 25. Schuyler 26. Chemung 27. Tompkins 28. Tioga 29. Broome	<u>Central NY</u> 44. Oswego 45. Onondaga 46. Cortland 47. Madison 48. Oneida 49. Otsego 50. Chenango 51. Delaware 52. Seneca 53. Cayuga	

## **5. CONTRACT CLAUSES AND REQUIREMENTS**

---

### **5.1 APPENDIX A / ORDER OF PRECEDENCE**

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

1. Appendix A (dated January 2014)
2. Contract Agreement
3. OGS RFQ Number 1974 (This Document) Including any Addenda
4. Selected Contractor's Quote

### **5.2 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING**

Pursuant to State Finance Law §139-j and §139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Vendor during the procurement process. A Vendor is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter 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 and in Section 2.1. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Vendor 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 Vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: <http://www.ogs.ny.gov/acpl/>

### **5.3 CONFIDENTIALITY**

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

### **5.4 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 RFQ, 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.

### **5.5 CONTRACTOR INSURANCE REQUIREMENTS**

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"),

Certificates of Insurance (hereinafter referred to as “Certificates”), evidencing compliance with all requirements contained in this Section. Such Certificates shall be of a form and substance acceptable to OGS.

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State and acceptable to OGS; shall be primary and non-contributing to any insurance or self-insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to Office of General Services, Purchasing Unit, Corning Tower, 32nd Floor, Empire State Plaza, Albany, New York 12242 and shall name The People of the State of New York, its officers, agents, and employees as additional insureds there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office’s (ISO) form number **CG 20 10 11 85**). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

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

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

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

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

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

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

- a) Commercial General Liability Insurance with a limit of not less than **\$5,000,000 each occurrence**. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
  1. If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.
- b) Comprehensive Business Automobile Liability Insurance with a limit of not less than **\$1,000,000 each accident**. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

- c) 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.
- d) WORKERS' COMPENSATION / DISABILITY INSURANCE:  
Prior to any contract resulting from this RFQ 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](http://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, Division of Financial Administration, Agency Procurement Office, 32<sup>nd</sup> Floor, Mayor Erastus Corning 2<sup>nd</sup> Tower Building, 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 RFQ, 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.**

## **5.6 TAX AND FINANCE CLAUSE**

### **TAX LAW § 5-A:**

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

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or

other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

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

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

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

## **5.7 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. 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 Disparity Study 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 establish 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.

### **II. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“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, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

### **III. Equal Employment Opportunity (EEO)**

- A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 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. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies 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 agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS 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.
- C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
  - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS 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 Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
  - 2. Separate forms shall be completed by Contractor and any subcontractor.
  - 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or

subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- 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 and conviction and prior arrest.

#### **IV. Contract Goals**

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, 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.

#### **B. Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.

(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.

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

## **5.8 FREEDOM OF INFORMATION LAW / TRADE SECRETS**

During the evaluation process, the content of each bid will be held in confidence and details of any bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom

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

## 5.9 GENERAL REQUIREMENTS

- The Proposer agrees to adhere to all State and Federal laws and regulations in connection with the contract.
- The Proposer agrees to notify OGS of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The Proposer agrees that in any contract resulting from this RFQ it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- The Proposer agrees that any contract resulting from this RFQ 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 RFQ, 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 RFQ, 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 Proposer 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 Proposer has based its bid on the more expensive option. Final decision will rest with OGS.
- INSPECTION – For purposes of any contract resulting from this RFQ 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 RFQ and any contract(s) resulting there from at any time that it is deemed the Contractor 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 proposal, the Contractor 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.

## 5.10 CONTRACT TERMS

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

Any contract resulting from this RFQ 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.

## 5.11 SUBCONTRACTORS

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

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this RFQ 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 RFQ.

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 NYS Board of Elections, 40 N. Pearl Street, Suite 5, Albany, NY 12207, 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 OGS may require concerning the proposed subcontractor's ability and qualifications.

## 5.12 PROCUREMENT RIGHTS

The State of New York reserves the right to:

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

**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.

## **5.13 EXTENT OF SERVICES**

OGS reserves the right to re-negotiate at its discretion and 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.

## **5.14 DEBRIEFINGS**

Pursuant to Section 163(9) (c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

## **5.15 TERMINATION**

### **Termination**

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

In addition, OGS may also terminate any contract resulting from this RFQ upon ten (10) days written notice if the Contractor makes any arrangement for 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 RFQ, 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 RFQ and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

### **Procurement Lobbying Termination**

The OGS reserves the right to terminate the Contract 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 the Contract.

## **5.16 NYS VENDOR RESPONSIBILITY QUESTIONNAIRE**

OGS conducts a review of prospective contractors ("Proposers") to provide reasonable assurances that the Proposer 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 Proposer's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Proposer agrees to fully and accurately complete the Questionnaire. The Proposer acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Proposer is responsible, and that the State will be relying upon the Proposer's responses to the Questionnaire when making its responsibility determination.

OGS recommends each Proposer 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](http://www.osc.state.ny.us./vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us> .

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

In order to assist the State in determining the responsibility of the Proposer prior to Contract Award, the Proposer must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Proposer's Questionnaire cannot be viewed by OGS until the Proposer has certified the Questionnaire. It is recommended that all Proposers 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 Proposer 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.

## **5.17 NEW YORK STATE VENDOR FILE REGISTRATION**

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York. If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor ID number on the Contractor Information page included in Appendix B of this solicitation.

If the Bidder is not currently registered in the Vendor File and is recommended for award, OGS shall request completion of OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. The

Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. For more information on the vendor file please visit the following website: [http://www.osc.state.ny.us/vendor\\_administration](http://www.osc.state.ny.us/vendor_administration)

**Forms to be completed:** [http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)

## **5.18 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.

## **5.19 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.

## **5.20 ENCOURAGING USE OF NYS BUSINESSES**

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.

Proposers/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, proposers/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 proposers/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.

## **5.21 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

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

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

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran’s Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS  
DOCUMENT FOR FUTURE  
REFERENCE.**

## **TABLE OF CONTENTS**

<b>1.</b>	<b>Executory Clause</b>	<b>3</b>
<b>2.</b>	<b>Non-Assignment Clause</b>	<b>3</b>
<b>3.</b>	<b>Comptroller’s Approval</b>	<b>3</b>
<b>4.</b>	<b>Workers’ Compensation Benefits</b>	<b>3</b>
<b>5.</b>	<b>Non-Discrimination Requirements</b>	<b>3</b>
<b>6.</b>	<b>Wage and Hours Provisions</b>	<b>3</b>
<b>7.</b>	<b>Non-Collusive Bidding Certification</b>	<b>4</b>
<b>8.</b>	<b>International Boycott Prohibition</b>	<b>4</b>
<b>9.</b>	<b>Set-Off Rights</b>	<b>4</b>
<b>10.</b>	<b>Records</b>	<b>4</b>
<b>11.</b>	<b>Identifying Information and Privacy Notification</b>	<b>4</b>
<b>12.</b>	<b>Equal Employment Opportunities For Minorities and Women</b>	<b>4-5</b>
<b>13.</b>	<b>Conflicting Terms</b>	<b>5</b>
<b>14.</b>	<b>Governing Law</b>	<b>5</b>
<b>15.</b>	<b>Late Payment</b>	<b>5</b>
<b>16.</b>	<b>No Arbitration</b>	<b>5</b>
<b>17.</b>	<b>Service of Process</b>	<b>5</b>
<b>18.</b>	<b>Prohibition on Purchase of Tropical Hardwoods</b>	<b>5-6</b>
<b>19.</b>	<b>MacBride Fair Employment Principles</b>	<b>6</b>
<b>20.</b>	<b>Omnibus Procurement Act of 1992</b>	<b>6</b>
<b>21.</b>	<b>Reciprocity and Sanctions Provisions</b>	<b>6</b>
<b>22.</b>	<b>Compliance with New York State Information Security Breach and Notification Act</b>	<b>6</b>
<b>23.</b>	<b>Compliance with Consultant Disclosure Law</b>	<b>6</b>
<b>24.</b>	<b>Procurement Lobbying</b>	<b>7</b>
<b>25.</b>	<b>Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors</b>	<b>7</b>
<b>26.</b>	<b>Iran Divestment Act</b>	<b>7</b>

## **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, licensor, licensee, lessor, lessee or any other party):

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

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

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

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to 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/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/reg/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.

## **RFQ Appendix B**

### **Required Procurement Forms**

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

- Contractor Information Page
- Corporate Acknowledgement (must be notarized);
- Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law;
- Offerer Disclosure of Prior Non-Responsibility Determinations;
- Offerer's Certification of Compliance with State Finance Law §139-k(5)
- NYS Required Certifications
- ST-220 -TD Taxation & finance Contractor Certification (Submitted directly to Taxation & Finance)
- ST-220 -CA Taxation and Finance Covered Agency Certification;
- NYS Vendor Responsibility Questionnaire
- Small Business Affirmation (if applicable)

**Contractor Information**  
**Solicitation Number 1974**

\_\_\_\_\_  
(Authorized Signature) (Date)

\_\_\_\_\_  
(Print Name) (Title)

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

\_\_\_\_\_  
(NYS Vendor I.D. Number)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(County)

\_\_\_\_\_  
(Telephone Number) Ext. \_\_\_\_\_

\_\_\_\_\_  
(Toll Free Phone) Ext. \_\_\_\_\_

\_\_\_\_\_  
(Fax Number)

\_\_\_\_\_  
(Toll Free Fax Number)

\_\_\_\_\_  
(E-mail)

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

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

New York State Certified Women Owned Business      Circle One:    Yes    No

Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State?      Circle One:    Yes    No

Will New York State Businesses be used in the performance of this contract?

Circle One:    Yes        No

If yes, identify New York State Business(es) that will be used; (Attach identifying information).

Does your proposal meet all the requirements of this solicitation? Circle One:    Yes        No



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

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

B. 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: \_\_\_\_\_

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:

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

No \_\_\_\_\_ Yes \_\_\_\_

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 \_\_\_\_

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)

\_\_\_\_\_

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 \_\_\_\_

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)**

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

Offerer Certification:

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

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

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

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

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

\_\_\_\_\_

**Procurement Lobbying Termination**

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

## **NYS REQUIRED CERTIFICATIONS**

### **NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

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

1. have business operations in Northern Ireland No  Yes  , and if yes:
2. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.  
No  Yes

---

### **NON-COLLUSIVE BIDDING CERTIFICATION**

E. In accordance with Section 139-d of the State Finance Law, by submitting its bid each bidder and each person signing on behalf of any other bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

---

### **DIESEL EMISSION REDUCTION ACT**

G. Pursuant to N.Y. Environmental Conservation Law §19-0323 (“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:  
 IS NOT a Small Business as defined in New York State Executive Law Section 310(20).  
 IS a Small Business as defined in New York State Executive Law Section 310(20).

“Small business” shall mean a business which:

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

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

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



New York State Department of Taxation and Finance  
**Contractor Certification**

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

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

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

**General information**

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

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

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

Mail completed form to:

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

**Privacy notification**

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

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

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

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

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

**Need Help?**



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



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



**Telephone assistance** is available from

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

**Sales Tax Information Center:** 1 800 462-8100

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

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



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with

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

Make only one entry in each section below.

**Section 1 - Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 - Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 - Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

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

\_\_\_\_\_  
(sign before a notary public)

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



**Individual, Corporation, Partnership, or LLC Acknowledgment**

I. STATE OF}  
J. :SS.:  
K. 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

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

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

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

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

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:  
(Mark an X in only one box)

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

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

\_\_\_\_\_  
(sign before a notary public)

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

## Instructions

### General Information

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

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

**Note:** Form ST-220-CA must be signed by a person authorized to make the

certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

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

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- 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).



## **NYS Vendor Responsibility Questionnaire**

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](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> .

**Small Business Affirmation  
Of Compliance with  
State Finance Law §160 (8)**

State Finance Law §160 (8) provides that:

8. "Small business concern" or "small business" means a business which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

On behalf of \_\_\_\_\_, I affirm that the company  
(Name of Company)

is compliant with the definition of "small business concern" or "small business" as set forth in  
State Finance Law §160 (8).

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

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

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

## ATTACHMENT 1

### QUOTE PROPOSAL FORM

### RFQ #1974

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

The Contractor listed above agrees to provide all services in accordance with the specifications in this RFQ for the prices bid below:

Process Servers Location of Service (See Regions Section 4.4 of the RFQ)	Unit Price	Subtotal
North Country	A. \$ _____	I. 1 X A. = \$ _____
Western NY	B. \$ _____	II. 4 X B. = \$ _____
Southern Tier	C. \$ _____	III. 1 X C. = \$ _____
Hudson Valley	D. \$ _____	IV. 2 X D. = \$ _____
New York City/Metro	E. \$ _____	V. 38 X E. = \$ _____
Central NY	F. \$ _____	VI. 2 X F. = \$ _____
Capital Region	G. \$ _____	VII. 2 X G. = \$ _____
<b>Grand Total Bid Amount</b> (I.+II.+III.+IV.+V.+VI.+VII.)	\$ _____	

Note: Quote submitted must include a value for each item amount listed on the Quote Proposal Form. Failure to do so will result in the rejection of the quote.

SIGN BID HERE \_\_\_\_\_  
 Authorized Signature

PRINT NAME \_\_\_\_\_

TITLE \_\_\_\_\_

# **RFQ Appendix C**

## **Sample Contract**

**Solicitation No. 1974**

**STATE OF NEW YORK**  
**OFFICE OF GENERAL SERVICES**  
**AGREEMENT FOR**  
**PROCESS SERVERS FOR THE NYS BOARD OF ELECTIONS**  
**DIVISION OF ELECTION LAW ENFORCEMENT**  
**IN ALBANY NEW YORK**  
**WITH**  
**(CONTRACTOR)**  
**CONTRACT #BOE01-C00XXXX-1110000**

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the People of the State of New York, acting by and through the Co-Executive(s) of The State Board of Elections, whose office is on the 5th Floor, Ten Eyck Plaza, 40 North Pearl Street, Albany, NY 12207 (hereinafter "Co-Executive(s)", "BOE" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, The State Board of Elections (BOE), on behalf of the Chief Enforcement Counsel (CEC), Division of Election Law Enforcement of the New York State Board of Elections (BOE), and in fulfilling its responsibility deems it necessary to obtain therefore, and

**WHEREAS**, BOE 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 insurance consultant services, 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**

BOE shall pay the Contractor for all fees and other fees and expenses in accordance with the amounts and rates put forth in the Contractor's proposal attached hereto as Appendix C, which Appendix C is hereby incorporated by reference and made a part hereof as fully as if set forth as length herein. This contract will be established with a not to exceed value of \$200,000.00. Services performed beyond this amount will not be compensated.

## **2. TERM**

This contract will commence upon approval and will be in effect for two years or until the \$200,000.00 maximum value is reached, whichever comes first.

## **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. 1974, 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, BOE may also terminate any contract resulting from this solicitation upon ten (10) days written notice if the Contractor makes any arrangement for assignment for the benefit of the creditors.

Furthermore, BOE 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 BOE 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 BOE 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 – Solicitation #1974 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 BOE 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 BOE 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 BOE under this Agreement.

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

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of BOE 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 BOE 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 BOE 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 BOE officials or staff, the Contract may be terminated by the Commissioner of BOE or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of BOE or her designee to be non-responsible. In such event, the Commissioner of BOE 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.

SAMPLE

**CONTRACT NO. BOE01-C00XXXX-1110000**

**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**

**APPROVED**

Eric Schneiderman  
Attorney General

Thomas P. DiNapoli  
State Comptroller



# 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 Quote**

SAMPLE

## **Appendix C**

### **Contractor's Proposal**

SAMPLE

**ATTACHMENT 1  
QUOTE PROPOSAL FORM  
RFQ #1947**

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

The Contractor listed above agrees to provide all services in accordance with the specifications in this RFQ for the prices bid below:

<b>Process Servers Location of Service (See Regions Section 4.4 of the RFQ)</b>	<b>Unit Price</b>	<b>Subtotal</b>
North Country	A. \$ _____	I. 1 X A. = \$ _____
Western NY	B. \$ _____	II. 4 X B. = \$ _____
Southern Tier	C. \$ _____	III. 1 X C. = \$ _____
Hudson Valley	D. \$ _____	IV. 2 X D. = \$ _____
New York City/Metro	E. \$ _____	V. 38 X E. = \$ _____
Central NY	F. \$ _____	VI. 2 X F. = \$ _____
Capital Region	G. \$ _____	VII. 2 X G. = \$ _____
<b>Grand Total Bid Amount (I.+II.+III.+IV.+V.+VI.+VII.)</b>	<b>\$ _____</b>	

Note: Quote submitted must include a value for each item amount listed on the Quote Proposal Form. Failure to do so will result in the rejection of the quote.

SIGN BID HERE

\_\_\_\_\_   
Authorized Signature

PRINT NAME

TITLE

\_\_\_\_\_  
\_\_\_\_\_

## Bid Submission Checklist Attachment 2 - RFQ 1974

<u>Section</u>	<u>Checklist Item</u>
2.2.1	<b>Technical Proposal</b>
	<b>(1) Original, (4) Exact copies</b>
2.2.1.1	Cover Letter
2.2.1.2	Qualifications
2.2.1.3	Experience
2.2.1.4	Staffing and Operational Plan
2.2.2	<b>Quote Proposal</b>
	<b>(4) Originals, (1) Exact copy- separately sealed</b>
Attachment 1	Cost Proposal Form
2.2.3	<b>Administrative Proposal</b>
	<b>(4) Originals, (1) Exact copy of each form</b>
Appendix B	Contractor Information Page
Appendix B	Corporate Acknowledgement (must be notarized)
Appendix B	Offerer's Affirmation of Understanding of and Agreement pursuant to NYS Finance Law
Appendix B	Offerer Disclosure of Prior Non-Responsibility Determinations
Appendix B	Offerer's Certification of Compliance with State Finance Law §139-k (5)
Appendix B	MacBride & Non-Collusive Bidding Certification
Appendix B	SDVOB Contract Performance
5.4	EEO 100 Staffing Plan (can be found at <a href="http://www.ogs.ny.gov/MWBE/Forms.asp">http://www.ogs.ny.gov/MWBE/Forms.asp</a> )
	Signed copies of all addenda released for this solicitation
5.5	<b>Insurance</b>
	<b>(1) copy of each required certificate to be supplied (if awarded this contract)</b>
	WCL - Workers Compensation (see RFQ for acceptable forms)
	Disability Benefits (see RFQ for acceptable forms)
	Commercial General Liability Insurance
	<b><u>I certify, with my signature below, that all required information listed above is completed and included in this bid submission.</u></b>
	<i>Signature</i>
	<i>Date</i>