NEW YORK STATE OF OPPORTUNITY. | Office of General Services

ANDREW M. CUOMO
Governor

ROANN M. DESTITO
Commissioner

DIVISION OF FINANCIAL ADMINISTRATION

ADDENDUM #1

Invitation for Bid (IFB) #1996

Date: October 20, 2016

Subject: Adding the time for **Mandatory Site Visit**

Title: Railroad Tank Car Fire Training Prop

Bid Due Date: **December 6th, 2016 at 2:00pm**

Address Bids to:
Paige Mieczkowski
Division of Financial Administration
NYS Office of General Services
32nd Floor, Corning Tower
Empire State Plaza
Albany, New York 12242
IFB# 1996

The time for the mandatory Site Visit was inadvertently left out of Section 1.3 Key Events.

Date and Time of Mandatory Site Visit:

November 9th, 2016 at **10:00am**

All other terms and conditions remain unchanged.

If submitting a proposal, this Addendum #1 for IFB #1996 must contain an original signature, be dated, attached to, and made a part of your proposal. You must include (3) copies as well.

Company Name

Address (include City, State, Zip)

Bidders Name (please print) Title

Signature Date

INVITATION FOR BIDS (IFB) #1996

SOLICITED BY THE
NEW YORK STATE OFFICE OF GENERAL SERVICES ON BEHALF OF
DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY SERVICES

For

Railroad Tank Car Fire Training Prop

ISSUE DATE: OCTOBER 19TH, 2016

BID DUE DATE: DECEMBER 6TH, 2016 AT 2:00PM

Designated Contact:

Paige Mieczkowski

Voice: 518-474-5981

Fax: 518-486-3651

E-mail: Paige.Mieczkowski@ogs.ny.gov

Alternate Contact:

Erin Datri

Same

Same

E-mail: Erin.Datri@ogs.ny.gov

Alternate Contact:

Bill Macey

Same

Same

E-Mail: William.Macey@ogs.ny.gov

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1. Introduction

1.1 Overview

This Invitation for Bids (IFB) is being released by the New York State Office of General Services (OGS or State) Division of Financial Administration on behalf of the Department of Homeland Security and Emergency Services (DHSES). DHSES is seeking to develop a rail tank car based live fire training prop to be located at the New York State Academy of Fire Science in Montour Falls, New York. This is in response to Executive Order 125, issued by Governor Andrew Cuomo, which charged State agencies, including DHSES, to develop recommendations to improve the State's ability to prevent an incident involving crude oil or respond to any incident that should occur.

This solicitation outlines the terms, conditions, and all applicable information required for submitting a proposal. Proposers should pay strict attention to **Section 1.3- Key Events** to prevent disqualification. To ensure compliance with the IFB requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Paige Mieczkowski, Contract Management Specialist 1, NYS Office of General Services, Division of Financial Administration has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email, voice or fax for all inquiries regarding this solicitation.

Paige Mieczkowski, Contract Management Specialist 1
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Email: Paige.Mieczkowski@ogs.ny.gov

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

Erin Datri, Contract Management Specialist 3
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Email: Erin.Datri@ogs.ny.gov

William Macey, Procurement Manager 1
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Email: William.Macey@ogs.ny.gov

Continues to next page:

Erin Heid, Senior Administrative Assistant
NYS Department of Homeland Security and Emergency Services
1220 Washington Avenue, Building 7a, 5th Floor
Albany, NY 12226
Voice: 1-518-242-5065
Email: Erin.Heid@dhses.ny.gov

1.3 Key Events

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

OGS Issues Invitation for Bids (IFB) for Crude by Rail Live Fire Training Prop	October 19th, 2016
Mandatory Site Visit	November 9th, 2016
Deadline for Submission of Proposer Questions	November 16th, 2016
OGS Issues Responses to Written Questions (estimated)	November 23rd, 2016
Bid Due Date/ Bid Opening Date	December 6th, 2016
Contract Start Date	Upon OSC approval

1.4 Minimum Bidder Qualifications

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

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

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

- Contractor must have completed 10 or more Live Fire Training Props of comparable scale
- Company must specialize in fire training related products and/or services

1.5 Site Visit

Bidders intending to submit a bid must attend a mandatory site visit which, will include an inspection of the Rail Car, to be held on the date and time listed above under Key Event Dates (section 1.3). This is the only date and time available for inspection. Alternate dates for additional site inspections will not be available. Attendees will be required to sign in and provide basic company and contact information. This information will be used to verify attendance and to communicate any changes to the solicitation (addenda). Therefore it is imperative that the provided information be legible and accurate. Failure to attend the mandatory site visit will result in rejection of the bid. The facilitator of the event will publicly announce the official start time of the pre-bid site visit, which announcement shall be made no sooner than the time stated in Section (1.3). Prospective bidders arriving after the official start time of the site visit will be precluded from attending the site visit and therefore unable to submit a responsive bid.

The site visit will be held at the New York State Academy of Fire Science, 600 College Ave., Montour Falls, New York 14865.

Please note that location may have security policies which must be followed. The Bidder will work with DHSES to obtain necessary clearances. Bidders may be required to provide information such as, but not limited to, the company name, the employee's name (as it appears on ID), valid driver license number, vehicle make, model and license plate, etc.

In accordance with State Finance Law §139-j (3) (a) (3), this mandatory site visit is covered by the permissible subject matter authorization. A vendor is authorized to speak with representatives other than Ms. Mieczkowski for the sole purpose of the site visit (to arrange attendance, during the conduct of the visit and to pose questions regarding the site).

The site visit will provide an opportunity for Bidders to see first-hand the existing equipment, the tasks to be performed and the special needs of the facility. Questions during the site visit will be permitted. It is suggested that the Bidder note the question and ask at the end of the tour.

Verbal answers are not official answers. All questions asked at the conference or after the tour must be submitted via email to the designated contact for this solicitation no later than the date indicated in Section (1.3) Key Events. Official answers to all questions will be distributed in the form of an addendum via email to all attendees of the mandatory site visit. Only answers provided by addendum are considered official.

NOTE: If there are any questions Bidders would like addressed at the site visit, Bidders should submit them in writing as instructed in Section (2.1) – IFB Questions and Clarifications, to the designated contact prior to the date of the site visit. Questions during the site visit will be permitted, however, only questions submitted in writing and answered via addendum will be considered official.

2. Bid Submission

2.1 IFB 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:

Paige Mieczkowski, Contract Management Specialist I
OGS Division of Financial Administration
ESP, Corning Tower, 32nd Floor
Albany, NY 12242
Phone: 1-518-474-5981
E-mail: Paige.Mieczkowski@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 IFB. The final deadline for submission of any questions/clarifications regarding this IFB is listed in Section 1.3 – 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 1.3 – 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 IFB, as necessary.

2.2 Bid Format and Content

In order for the State to evaluate bids fairly and completely, bidders 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.

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

1. **Cover Letter**. The cover letter must confirm that the bidder understands all the terms and conditions contained in this IFB and will comply with all the provisions of this IFB. Further, that should the contract be awarded to your company, you would be prepared to begin services on the date indicated in Section 1.3 – Key Events. The cover letter must include the full contact information of the person(s) NYS OGS shall contact regarding the bid and must also include the name(s) of principal(s) of the company responsible for this contract, their function, title and number of years of service with company. A bidder 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 of each proposed subcontractor.
2. **Minimum Qualifications.** Bidders must provide proof of meeting each of the minimum qualifications as listed in Section 1.4.
3. **Experience & Operational Plan**: Bidders must describe their capabilities to provide the services required in this IFB by providing the following:
    - A description of Bidder's experience with fire training props.
    - Staffing plan, including the use of any subcontractors.
    - Bidder shall provide a minimum of three (3) references including references from two of the bidder's largest customers. References shall be commercial or governmental accounts,

and should demonstrate the ability of the vendor to perform jobs similar in scope to the size, nature and complexity of the outlined bid. The references shall include the following: company name, address, contact person, telephone number, e-mail address, number of years bidder has serviced the referenced account; and volume of business performed within the past three years for each referenced account.

4. **Pricing**. Bidders shall submit a completed Bid Proposal Form (Attachment 1). Each item must be complete with no lines omitted. Bidder shall not provide alternative pricing or deviate from the Cost Proposal Form. Alternative pricing methodologies will not be considered and may result in the rejection of the bid.

5. **Administrative Submission**.

   - All other required completed forms from IFB Appendix B.
   - Signed bid addenda (if any)
   - **MWBE.** This procurement includes MWBE participation goals of which all bidders must comply. See section 5.5 of this solicitation for specific details pertaining to this procurement opportunity. The New York State Contract System includes an MWBE Directory that can be utilized to find certified MWBE businesses to meet this requirement. (https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687)

   - Signed bid addenda (if any)
   - Important Notes:
     - Insurance – Proposers are reminded of the insurance requirements as described in Section 5.3. The selected Proposer will be required to provide all necessary documentation upon notification of selection.
     - Vendor Responsibility - Proposers are reminded of the requirement as described in Section 5.14, and are requested to complete the online questionnaire located on the OSC VendRep System website prior to bid submission. If the vendor has previously certified responsibility online, it shall ensure that the VRQ was recertified in the last 6 months.
     - Document Consistency - An award will only be made to the entity which has submitted bid. All submitted documents must be consistent with official name of bidding entity, FEIN and NYS Vendor ID number.
     - A Proposer shall be registered with the NYS Department of State as an entity authorized to conduct business in New York State 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 Bid Preparation

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

2.4 Packaging of IFB Response

Please submit:

- Four originals and one exact copy of the Bid Proposal Form (Attachment 1)

- One original and four exact copies of: the Cover Letter; Minimum Qualifications information; Experience and Operational Plan
- Four originals and one exact copy of the Administrative Submission

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

Bidder's Complete Name and Address

Solicitation Number: IFB #1996

Bid Due Date and Time: Same as indicated in Section 1.3 - Key Events

Title: Railroad Tank Car Fire Training Prop

Attention: Paige Mieczkowski

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

2.5 Instructions for Bid Submission

Note: These instructions supersede the generic instructions posted on the OGS website bid calendar.

Only those Bidders who furnish all required information and meet the mandatory requirements will be considered. Submit all required bid documents including signed bid addenda if any, to the NYS Office of General Services - Division of Financial Administration at the following address:

NYS Office of General Services
Division of Financial Administration – Agency Procurement Office
32nd Floor, Corning Tower, Empire State Plaza
Albany, NY 12242
Attn: Paige Mieczkowski
IFB #1996

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

The State of New York will not be held liable for any cost incurred by the Bidder 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 1.3 - Key Events. Bidders assume all risks for timely, properly submitted deliveries.

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 90 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 day period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the bid in writing by Bidder. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing Office to the successful Bidder. This IFB remains the property of the State at all times, and all responses to this IFB, 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 48 hours prior to the bid opening. Pre-registered visitors are to report to the visitor desk located at the Concourse level of the Corning Tower. Upon presentation of appropriate photo identification, the visitor will be allowed access to the building.

Upon arrival at the visitor desk, visitors that have not pre-registered will be directed to a designated phone to call the OGS Finance Office. The Finance Office will then enter the visitor's information into the building access system. Access will not be allowed until the system has been updated. Visitors are encouraged to pre-register to ensure timely access to the building. Vendors who intend to deliver bids or conduct business with NYS 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://www.ogs.ny.gov/BU/BA/Parking/Visitor

2.6 Examination of Existing Building and Contract Documents

Each Contractor is under an affirmative duty to inform itself by personal examination of the specifications and location 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 Contractor 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 work will be accepted by the Commissioner of the Office of General Services or a designated representative as an excuse for any failure or omission on the part of the Contractor to fulfill every detail of all the requirements of the documents governing the work. Contractor, if awarded contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such contractor might have fully informed itself prior to bidding.

Any Contractor in doubt as to the true meaning of any part of this Invitation for Bid or the proposed contract documents shall submit to Paige Mieczkowski, Contract Management Specialist 1, NYS Office of General Services, Financial Administration – Agency Procurement Office, 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242, a written request for an interpretation thereof. If a major change is involved on which all bidders must be informed, such request for interpretation shall be delivered, in writing, via e-mail by the closing date for inquiries. Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be mailed or delivered to each potential Bidder.

Any addendum issued during the bidding process shall be included in bids and in closing a contract will become a part thereof.

Any verbal information obtained from or statements made by representatives of the Commissioner of General Services at the time of examination of the documents or site shall not be construed as in any way amending Contract Documents. Only such corrections or addenda as are issued in writing to all bidders shall become a part of the contract. The Commissioner of General Services will not be responsible for verbal instructions.

3. Administrative Information

3.1 Issuing Office

This IFB is being released by the New York State Office of General Services Division of Financial Administration on behalf of the Department of Homeland Security and Emergency Services.

3.2 Method of Award

The state intends to award one contract to the lowest responsive and responsible bidder. The lowest bidder shall be determined by the Grand Total Bid as represented on Attachment 1 – Bid Proposal Form.

Upon determination of the lowest responsive and responsible bid, a contract will be sent to the successful bidder for signature and shall be returned to the Issuing Office for all necessary State approvals. Upon final approval, a completely executed contract will be delivered to the Contractor.

The Grand Total bid amount of the successful bidder shall be used to establish the total contract value. The established total contract value shall not be exceeded.

3.3 Price

Bidders are required to submit pricing using **Attachment 1 Bid Proposal Form**. This will include lump sum pricing for all specified requirements listed in **Section 4 - Scope of Work. Each requirement must be addressed and accounted for in your total bid amount. Any exclusions may result in rejection of your bid.**

Additionally, an hourly rate and materials mark-up will be submitted for any pre-approved additional services that may be required (unforeseen repairs and/or services during the upfitting of the tank, etc.). Proposers must submit a separate hourly rate for an employee to cover such services. **Attachment 1 – Cost Proposal** states an estimated number of hours for evaluation purposes only.

Bid prices shall be inclusive of all labor licenses, insurance, travel, training, administrative costs, overhead and profit, sustenance, lodging and employee benefits.

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

3.4 Term of Contract

This contract will commence upon OSC approval and will be in effect for one (1) year. However, the expected completion date of this project is May 1st, 2017.

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 NYS DHSES' intent to cancel. Any cancellation by NYS DHSES under this section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against NYS DHSES, 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 5.13 - Termination.

3.5 Method of Payment

For the purposes of this contract, payment will be issued upon completion of the job and submission of required documentation. Upon satisfactory completion, inspection and approval by the Department of Homeland Security and Emergency Services, an invoice shall be submitted to the OGS Business Services Center – Accounts Payable Unit for payment. The invoice will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Each invoice must contain the Contract ID number (i.e.: DHS01-C00XXXX-1140000), a unique invoice number, an itemized list of the services performed – including: date of service and description or type of service performed. Pricing must be in accordance with the cost proposal form.

Invoices without the above stated information will be returned to Contractor to be completed as required in the paragraph above. Payment will not be due or owing until a corrected invoice is received and approved by DHSES. All invoices or vouchers must be submitted for payment to either:

BSC / ACCOUNTS PAYABLE

1220 WASHINGTON AVE., BLDG 5, 5TH FL

ALBANY, NEW YORK 12226

or

accountspayable@ogs.ny.gov

Also, a copy of the invoice and reports must be forwarded to:

Erin.Heid@dhses.ny.gov

3.6 Electronic Payment

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

Please note that in conjunction with New York State's implementation of the Statewide financial system, the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form

when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

3.7 Past Practice

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

3.8 Exceptions 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. Bidders should be aware that failure to obtain a waiver of any proposal requirement in advance of bid submission, and/or inclusion of extraneous terms in the form of exceptions, assumptions, qualifiers, ranges, modifications, etc. with bid submission, may result in rejection of Bidder's proposal and disqualification from the bidding process.

Bidders 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 Key Events (Section 1.3). 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 IFB), or directly to the requesting vendor.

3.9 Dispute Resolution

It is the policy of the Office of General Services' Financial Administration to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to 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.

3.10 Prime Contractor Responsibilities

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

3.11 Inspection of Books

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

3.12 Glossary of Terms

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

"Contractor"/"Vendor" shall mean a successful company awarded a contract pursuant to this IFB.

"Invitation for Bid" or "IFB" 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.

"DHSES" shall mean The NYS Department of Homeland Security and Emergency Services.

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

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

3.13 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 IFB refer to this IFB.

4. Scope of Work

4.1 Operational Standards

All services under any contract resulting from this IFB shall be of the highest quality and standards; and must conform in all respects to Federal, State and municipal laws, ordinances, rules and regulations. The Contractor shall continuously maintain all required licenses and permits and shall provide for the inspection and review of such licenses and permits by the Department of Homeland Security and Emergency Services and any other persons authorized by law.

The service shall at all times be prompt, accurate, courteous and efficient.

The quality of service shall be subject to inspection by the State of New York at any time.

4.2 Scope of Work - General

All work will be completed on site at The New York State Academy of Fire Science, 600 College Ave., Montour Falls, New York 14865.

The railroad tank car fire training simulator shall be designed to provide hot, challenging multi-stage fires to train both firefighters and hazmat team members. The tanker shall consist of water cooled, constant flame pilot systems designed to ignite fires on and around the tank car prop. These fires shall be controlled by an operator, located on a control platform within sight of the entire prop.

The tank car simulator shall consist of the following:

- One DOT 111 specification tank car (supplied by NYS)
- One (1) Relief valve fire
- One (1) Heat Induced Tear fire
- One (1) large pool fire (approx. 25 ft. by 50 ft.)
- One (1) running fuel fire (approx. 5 ft. by 50 ft.)
- One (1) Tank Rupture
- One (1) control station situated on a platform
- All required propane supply piping and connectors
- All required electrical cable and connectors
- Propane supply tank and associated piping

4.2.1 General Requirements:

Project is expected to be completed by May 1st, 2017.

All major components (enclosures, burner elements, burner flex lines) shall be constructed of stainless steel.

All components (enclosures, pilot boxes, burner elements, electrical connections, etc.) shall be weather proof and permanently installed. All components must also be able to withstand large amounts of water and training foam mixtures being applied and still function properly.

The system operation is as a flame-pilot electronic-ignition system with a burner control system. The flame pilot shall not be extinguished by agent application. The flame pilot shall be instructor controlled. The pilot enclosure and burner control enclosure may share the same physical envelope. The pilot shall

be controlled by a pilot monitoring system which shall control the operation of all liquid propane gas valves. Main flame operation shall be inhibited until pilot operation is confirmed. All propane inlets shall each have a manual shutoff valve and an automatic main safety shutoff valve with an integrated proof of closure switch. These main safety shutoff valves shall close on the loss of electrical power or upon actuation of any switch in the emergency stop circuit.

All concrete work as specified in the following sections 1, 4, 5, 7 and 8, will consist of 3500 psi concrete, utilizing wire mesh for reinforcement. Concrete will be placed and formed on a level area consisting of 4 inches of #2 stone. This concrete slab for section 1 below will already be in place by the time work is scheduled to begin. The bidder is not responsible for providing this concrete work. It is for informational purposes only.

1. Railroad Tank Car

The DOT 111 specification railroad tank car will be supplied on site by NYS. It shall be placed on a concrete pad measuring 60 ft. wide by 100 ft. long by 10 inches thick to accommodate the railcar itself with added area to control runoff from hose streams applied to the prop. The railcar shall be vented so as to not allow buildup of propane in the event of a propane leak from one of the fires. A water mist system shall be provided to add cooling to the tank shell along with a water feed at the tank car to supply the simulated tank rupture.

Rail car shall include installation of a minimum of two personnel doors or provided with sufficient openings or access points and adequate ventilation of the interior to allow for any routine inspection and maintenance to occur on the interior of the tank without necessitating confined space entry procedures and requirements. Rail car shall include drains to avoid buildup of water applied during training evolutions.

2. Relief Valve Fire

The Relief Valve Fire shall consist of a quantity of 2 relief valve elements; a low fire and a high fire liquid blow off. Control of the fire shall be via the remote control station. When activated, the pilot will first ignite, and then there shall be a small, vapor fire, then a large, high pressure liquid fire.

3. Heat Induced Tear Fire

The Heat Induced Tear fire shall consist of an opening towards the top of the tank simulating a breach created by a rapid expansion of lading. This breach will be similar to an opening at a weld, and will be approximately one foot in width by approximately 8 feet in length. A liquid fueled fire will be produced from this opening. A pilot system and burner system to produce the fire will be located in the tank car just below the surface of the heat induced tear.

4. Large Pool Fire

The Large Pool fire will measure approximately 25 feet in width by approximately 50 feet in length and will be located directly in front of the railcar prop. This fire will have both low (vapor) and high (liquid) settings to show progression of a spill fire. It will also have flame impingement on the railcar prop, to simulate conditions which would result in activation of the relief valve and subsequent ignition of the venting product.

This fire will be even with the terrain in front of the railcar. It will consist of a large pool, constructed of either steel or concrete pans, capable of containing water at depth of one to two feet, with burner bars configured to give the appearance of an engulfed area. The burner bars will be submersed in water and

be ignited by a remote pilot. Prop shall provide for release of LP below the surface of the water and an electrically ignited, pilot ignition source fueled by above the water's surface to simulate an ignitable liquid fire and allow the application of a foam blanket to the surface of the water in each pan. NOTE: Piping orientation shall result in the fire condition from the spill or pool fire impinging upon the exterior of the rail car's tank in order to simulate the necessity for application of cooling streams to protect integrity of the tank car.

A concrete apron will be installed around the pool to enable foam stream application via the roll in method. This apron will be approximately 8 feet in width, 6 inches in depth and run the entire length of the pool fire (50 ft).

5. Running Fuel Fire

The Running Fuel fire will measure approximately 5 feet in width by approximately 50 feet in length and will be located partly in front of the railcar prop and to the left side. This fire will have both low (vapor) and high (liquid) settings to show progression of a spill fire. It will also have flame impingement on the railcar prop, to simulate conditions which would result in activation of the relief valve and subsequent ignition of the venting product.

This fire will be even with the terrain in front of and to the left side of the railcar. It will consist of a long pool, constructed of either steel or concrete, with burner bars configured to give the appearance of an engulfed area. The burner bars will be submersed in water and be ignited by a remote pilot.

The running fuel fire will have concrete placed in front of the pool to control water and foam application and runoff. The concrete will be 4 feet wide by 50 feet long and be 6 inches in depth.

6. Tank Rupture

The tank rupture will be located on the railcar, at the opposite end of the running fuel fire. It will be a hole or tear, approximately 4 inches in width by 12 inches in length. The rupture will be supplied by a water line attached to the railcar prop. This inlet shall be a 2 ½" female coupling with NST threads.

7. Control Station

The Control Station shall be the main area for running the railcar prop. It shall be located in direct view of the entire prop and situated on an elevated platform. The elevated platform shall be at least 6 feet from ground level and have a surface of 3 feet wide by 10 feet long. Stairs will be attached for access to the working area. Handrails at least 3 feet 6 inches high shall be on both sides of the stair case and on all open sides of the platform. The platform will be constructed of metal. The control station platform will be placed on a concrete pad (provided by others) measuring 10 ft. wide by 20 feet long by 6 inches in depth. The prop sections for each burn scenario shall be independently and remotely controlled.

The Operator at the Control Station will be able to ignite all of the fires from this area using an electronic control box. The control of the railcar prop shall meet the requirements for a propane gas fueled prop as outlined in NFPA standards 1402 and 1403.

There shall be a means to shut off the entire prop in an emergency situation located here.

8. Propane Supply

The Propane gas will be supplied to each of the fires through rigid pipe, below grade where necessary and feasible. There will be separate supply lines for vapor and liquid.

Propane supply shall come from a bulk storage tank located in proximity to the control platform.

A bulk propane supply tank (minimum 3000 gallons) will be located a safe distance from the Railcar prop so no radiant heat can affect the temperature of the propane supply. Tank shall be mounted on supports and include features to protect the tank and associated piping from damage due to being struck by a vehicle. The tank supports will be mounted on a concrete pad measuring 20 feet wide by 30 feet long by 6 inches deep. All necessary piping will be included to safely deliver liquid and vapor propane to the prop. The propane supply tank will meet all required specifications for a stationary tank as outlined by NFPA and ASTM.

A minimum of one remote shut off shall be provided at the LP supply tank.

9. Electrical Supply

There will be 110v, 30 amp power supplied to the control platform for use with the control unit. This electrical supply will be provided from existing supply, approximately 500 feet from the Control Station. A supply line of sufficient capacity shall be routed underground to the control station. Any necessary electrical cables and connectors for the actual prop shall be supplied by the vendor. All electrical work and related components, from trenching to final connections, will be supplied and completed by the vendor.

4.2.2 Safety

For added safety, a Safety Officer “dead-man” switch shall be included. Live fire operation to any of the fire zones shall be enabled by pressing and holding the button on the Safety Officer’s cable switch. The safety officer must be continuously depressing the button throughout the training exercise. Release of this button at any time shall cause the training fires to extinguish making it functionally a “dead-man” switch.

4.2.3 Compliance of Relevant Codes and Standards

As detailed below, the proposal will require compliance with the provisions of relevant codes and standards, including certification by an approved third party testing agency where required. Requirements to be included, at a minimum, are the following:

- The prop and its components shall comply with the following:
    - NFPA 1402 Guide to Building Fire Service Training Centers;
        - Specifically including, but not limited to, sections 13.2.5 (quick shut off valves), 13.2.6.3.1 (LP prop safety feature compliance with NFPA 54 Fuel Gas Code and NFPA 58 LP Gas Code), 13.2.6.3.2 (compliance with NFPA 86 Standard for Ovens and Furnaces), 13.2.6.3.3 (compliance with NFPA 70 National Electric Code and NFPA 79 Electrical Standard for Industrial Equipment), and 13.2.6.3.5 (certification and labeling by a nationally recognized testing lab to certify compliant with UL 508A Standard for Industrial Control Panels and NFPA 54, 58 and 86). And,
    - NFPA 1403 Standard on Live Fire Training Evolutions;

- Specifically including, but not limited to, sections 4.12.11.2 (remote fuel shut offs located outside safety perimeter, within sight of prop), 4.12.11.3 (remote shut off to be manned throughout by trained personnel), and 6.1.4 (flammable gas fires shall not be ignited manually).

The contract(s) resulting from this IFB will be a full service contract(s) having the Contractor provide all labor, materials, supplies and equipment necessary for the performance of all the work associated with this IFB. **Details of service not explicitly stated in this IFB, but necessarily attendant thereto are deemed to be understood by the Bidder and included in their bid (Bid Proposal Form- Attachment 1).**

4.3 Additional Services

Additional services (unforeseen repairs and/or services during the up fitting of the tank, etc.) shall be considered any services other than the bid specifications described in **Section 4.2** above.

All additional services require pre-approval by the DHSES contact. Additional Services performed without proper approval will not be compensated. DHSES retains the right to have any additional services completed via separate competitive bid or other means, as determined to be in the best interest of the State.

Additional Services shall only be performed when pre-approved in writing by the DHSES contact, and shall be compensated at the rates bid for these services, however, any subcontractor work shall be reimbursed at actual cost with the markup thereon being limited to five percent (5 %) of the actual cost. The following process shall apply:

The contractor shall prepare a quote for the DHSES contact. For Additional Service work performed by Contractor's staff, the quote must detail the scope of services, proposed timeline for completion, title(s) performing work, number of hours times hourly rate bid and any other information or options that the State should consider. The cost of materials will be reimbursed with no allowable markup. If subcontractors are to be used, the process detailed in the Subcontractors clause herein must be followed.

Upon approval, an e-mail authorizing the work will be issued. A copy of the authorization e-mail must accompany the invoice for any Additional Services.

4.4 Security and Scheduling Procedures

Contractors will be required to show a valid form of identification each day they arrive at the Academy.

Prior to the first day of arrival, the contractor must contact Ed Fletcher at (607) 535-7136 or by email, Edward.Fletcher@dhses.ny.gov to set up an appointment to meet for the first day of arrival.

The contractor will then be required to sign in at the front office and show identification each day of arrival thereafter.

4.5 Reporting Requirements

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

During the term of any contract resulting from this IFB, the Contractor shall maintain a designated officer or employee as its representative for contact with the State and for all communication and transactions relating to any contract resulting from this IFB.

The designated representative for all purposes of this contract shall be Edward Fletcher, Fire Protection Specialist 1.

Upon award of the contract and prior to the start of any work, the Contractor shall be available for an initial job meeting with the DHSES staff designated for this procurement. This meeting shall include:

- The Contractor's submission of a schedule of work to be reviewed and approved.
- An introduction for each respective organization, chain of command, etc.

4.6 Warranties

Warranty on labor must be a minimum of one (1) year from date of installation and acceptance. Warranty on parts must be a minimum of one (1) year from date of installation and acceptance or the standard manufacturer's warranty, whichever is longer.

Contractor hereby warrants and represents that all parts and labor specified and furnished by or through Contractor shall individually be guaranteed against parts failure or malfunction due to design, construction or installation errors, defective workmanship, and missing or incorrect parts for the manufacturer's warranty period or for a minimum of one year from the date of installation and acceptance, whichever is longer. During the warranty period, defects in the materials or workmanship of deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to DHSES.

Normal wear and tear items shall be warranted in accordance with manufacturer's standard warranty.

Warranties shall be honored by all the manufacturer's dealers in New York State.

The warranty period for all coverage shall begin upon acceptance by DHSES personnel, and shall survive the contract term.

Where motor(s)/pump(s) that develop chronic failures during the warranty period, the Contractor shall extend the warranty period for an equal period of time following correction of such failures, as indicated in the original warranty.

4.7 Prevailing Wage Rate Advisory Notice

DOL Article 8 - Prevailing Rate Case Number PRC# 2016008790 has been assigned to the project.

To view the PDF file of your wage schedule, Article 8, click on
https://applications.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1312419

Contractors are reminded that the payment of prevailing wages and supplements is a requirement of ALL contracts for public works. Information indicating that prevailing wages are not being paid on a public works project will be forwarded to the New York State Department of Labor for investigation. Willful violations of the prevailing wage provisions of the Labor Law may result in debarment from the bidding and award of public contracts. NOTE: ALL PUBLIC WORKS CONTRACTS, REGARDLESS OF DOLLAR VALUE, REQUIRE THE PAYMENT OF PREVAILING WAGES AND SUPPLEMENTS.

Contractors are required to supply each of their subcontractors with copies of the prevailing rate schedule and to obtain an affidavit acknowledging receipt and agreeing to pay required wages before entering into a subcontract. Contractors are responsible for assuring that their subcontractors pay prevailing wages and supplements. NOTE: CONTRACTORS ARE FURTHER REQUIRED TO POST THE PREVAILING

WAGE RATES AT THE WORK SITE ON BULLETIN BOARDS PROVIDED BY THE FACILITY MANAGER AND INFORM EMPLOYEES OF THE POSTING. FACILITY MANAGERS WILL ENFORCE THIS PROVISION.

Contractors are advised that the Office of General Services may make random inquiries of employees of both prime and subcontractors as to the rate of wages being paid and may request certified copies of one or more weekly payrolls of a contractor or any subcontractor to verify proper payment of wages. Any discrepancy found in information supplied will be reported to the Department of Labor for investigation.

4.8 OSHA (Occupational Safety & Health Administration) Training Requirements

OGS Facility Manager's Obligations

Prior to beginning contract work/work assignment, the DHSES representative shall inform the Contractor/Contractor's representative(s) of the known specific hazard(s) and chemical(s) they may encounter while performing their contract obligations. For example; they shall be informed of the location of Asbestos Containing Materials, if present, and any site specific work practices such as those involving Lockout/Tagout procedures.

The Contractor/Contractor's Representative(s) shall also be provided with information about the use of Personal Protective Equipment required for the work and where to get the specific items. **Contractor/Contractor's Representative shall provide a signed acknowledgement to the DHSES representative that they were provided with this information.**

Contractor / Contract Employee Obligations

A. General Contract Obligations:
Prior to or upon first reporting to the work location for assignment, the Contractor/Contractor employee(s) and employees of Sub-Contractors must present to the DHSES representative proof of completion of the OSHA required training for the following six (6) topic areas including but not limited to:

1) Toxic and Hazardous Substances
2) Control of Hazardous Energy (lockout/tag out),
3) Hazard Communication,
4) Permit Required Confined Spaces,
5) Personal Protective Equipment.

B. Specific Field-of-Work Requirements:
In circumstances where specific OSHA regulated work is required, for example but not limited to: Asbestos work; Lockout/tag out procedures; or work which involves entering a "confined space", the Contractor/Contract Employee(s) shall have all pertinent and up-to-date certifications beyond the "awareness" level as required by OSHA for the specific work.

It is the Contractor's responsibility to provide the DHSES representative with all employee updates and/or renewals for the specified training.

Note: Contractor's/Contractor's Employee(s) and employees of Sub-Contractors failure to provide such documentation to the DHSES representative upon or prior to employee reporting to their initial work assignment shall result in the DHSES representative rejecting the employee(s).

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 Service Agreement
3. OGS Invitation For Bid Number 1996 including any Addenda
4. Selected Contractor's Bid including Attachment 1

5.2 Procurement Lobbying Requirement

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

5.3 Contractor Insurance Requirements

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

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

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers licensed to do business in New York State and acceptable to OGS; shall be primary and non-contributing to any insurance or self-insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to Office of General Services, Purchasing Unit, Corning Tower, 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 insured's 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 limits detailed below. 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. $1,000,000 per occurrence
   2. $2,000,000 general aggregate which must apply on a per location/per project basis
   3. $2,000,000 products/completed operations aggregate

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 IFB becoming effective, Contractor must submit proof that they have the workers’ compensation and disability benefits coverage required by the New York State Workers’ Compensation Law, or proof that they are legally exempt from obtaining such coverage. Proof of compliance must be demonstrated in accordance with the requirements

set forth by the New York State Workers' Compensation Board (An instruction manual clarifying the Workers' Compensation Law requirements is available to download at the Workers' Compensation Board's website, www.wcb.ny.gov. Once you are on the website, click on *Employers/Businesses,* then *Business Permits/Licenses/Contracts*; from there, click on *Instruction Manual for Businesses Obtaining Permits/Licenses/Contracts*.) Contractor shall notify the Office of General Services, Financial Administration Contracts Unit, at least thirty (30) days prior to material change or cancellation of such coverage.

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

e) **Umbrella Liability Insurance** at a limit not less than $5,000,000 per occurrence and in the aggregate. The People of the State of New York, its Officers and Employees must be protected as additional insured on policies held by the selected Proposer and any of its subcontractors.

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

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

5.4 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 IFB. 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 Bidder non-responsive and non-responsible. Bidders 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

5.5 M/WBE and EEO Requirements

A. 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 Department of Homeland Security and Emergency Services ("DHSES"), 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 DHSES 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 DHSES 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. DHSES 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 DHSES, to fully comply and cooperate with DHSES 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, liquidated damages pursuant to clause IX of this section and/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) work, goods, or services unrelated to 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 Employment Utilization Report ("Workforce Report")
   1. If Contractor's Form EEO 100- Staffing Plan provides that Contractor is able to report the actual workforce utilized in the performance of this Contract, the following clause shall apply: Contractor agrees it will, upon request, submit to DHSES, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

   2. If Contractor's EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and DHSES agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or

subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically 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 conviction and prior arrest.

IV. Contract Goals

A. DHSES hereby establishes an overall goal of **30%** for MWBE participation, **15%** for Minority-Owned Business Enterprises ("MBE") participation and **15%** for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the DHSES Designated Contact. 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.

C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.

B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Bidder intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DHSES.

C. DHSES will review the submitted MWBE Utilization Plan and advise the Bidder of DHSES acceptance or issue a notice of deficiency within twenty (20) days of receipt.

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

E. DHSES may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

(a)If a Bidder fails to submit a MWBE Utilization Plan;
(b)If a Bidder fails to submit a written remedy to a notice of deficiency;
(c)If a Bidder fails to submit a request for waiver; or
(d)If OGS determines that the Bidder has failed to document good faith efforts.

F. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.

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

VI. Request for Waiver

A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the DHSES Designated for guidance.**

B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by DHSES at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, DHSES shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

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

D. If DHSES, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, DHSES may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven

(7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required 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 DHSES with certified MWBEs whom DHSES determined were capable of fulfilling the MWBE goals set in the Contract.

6. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to DHSES during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. DHSES requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

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

subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

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

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

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to DHSES, by the 10th day of each month during the term of the Contract, for the preceding month's activity to the DHSES contact.

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

IX. Breach of Contract and Liquidated Damages

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

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, DHSES determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the DHSES, Contractor shall pay such liquidated damages to the DHSES within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business

Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the DHSES.

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

5.6 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.

5.7 General Requirements

- The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.
- The Bidder agrees to notify DHSES of any changes in the legal status or principal ownership of the firm, forty five (45) days in advance of said change.
- The Bidder agrees that in any contract resulting from this IFB it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
- The Bidder agrees that any contract resulting from this IFB may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Commissioner of DHSES.
- For reasons of safety and public policy, in any contract resulting from this IFB, 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 IFB, 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.
- The Commissioner's interpretation of specifications shall be final and binding upon the Contractor.
- The Commissioner of DHSES will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
- Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with the Commissioner of General Services.
- INSPECTION – For purposes of any contract resulting from this IFB, 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, the Commissioner of DHSES 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 - The Commissioner of DHSES reserves the right to stop the work covered by this IFB and any contract(s) resulting there from at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, DHSES shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Bidder shall be liable to the State of New York for any such costs on account thereof. In the event that the DHSES 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.
- It is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
- DHSES reserves the right to reject and bar from the facility any employee hired by the Contractor.

5.8 Contract Terms

All provisions and requirements of Appendix A (dated January 2014) 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 IFB, 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 IFB, 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 IFB.

Any contract resulting from this IFB 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.

5.9 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 for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed. If subcontractors are to be used for Additional Services, they will be subject to the Additional Services clause, and associated markup provision herein.

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

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 DHSES contact, 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 DHSES contact may require concerning the proposed subcontractor's ability and qualifications.

In the event that subcontractors must be used during the term of this contract for Additional Services work, the following guidelines shall apply.

A. The Contractor shall procure goods and services using commercially reasonable and prudent practices to obtain the most favorable price and terms. The Contractor will make his/her best efforts and shall document same to obtain written proposals or bids from at least three (3) responsible service providers before selecting the best price and terms. Prior DHSES approval is required for all Additional Services. The following conditions apply to competitive bidding for subcontracted additional services:

1) Each bid will be solicited in a form and manner conducive to uniformity in all bids. The Contractor will maintain documentation of the solicitation and results.

2) If the Contractor desires to accept other than the lowest bidder, or where competitive bids are not possible, adequate justification must be provided to the State for required prior approval.

3) The DHSES shall be free to accept or reject any proposal/subcontract submitted for State's approval, and Contractor shall provide DHSES with copies of all documentation DHSES may request in relation to such approval rights.

5.10 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all proposals received in response to this Solicitation.
2. Disqualify a Proposer from receiving the award if the Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Proposers' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Proposer.
4. Adjust any Proposer's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Proposer will cause the State to incur additional costs.
5. Utilize any and all ideas submitted in the proposals received.
6. Negotiate with Proposers responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.
7. Begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected Contractor within 21 days of selection notification.
8. Waive any non-material requirement not met by all Proposers.
9. Not make an award from this Solicitation.
10. Make an award under this Solicitation in whole or in part.

11. Make multiple contract awards pursuant to the Solicitation.
12. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
13. Seek clarifications of proposals.
14. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB/RFP.
15. Prior to the bid opening, amend the IFB/RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
16. Waive any requirements that are not material.
17. If two or more bids are found to be substantially equivalent, the Commissioner of OGS, at their sole discretion, will determine award using the pre-established process. For best value procurements, cost will be the determining factor.

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.

5.11 Extent of Services

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

5.12 Debriefings

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

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

5.13 Termination

A) Termination

The DHSES may, upon thirty (30) days notice, terminate the contract resulting from this IFB 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, DHSES may also terminate any contract resulting from this IFB upon ten (10) days written notice if the Contractor makes any arrangement for the assignment for the benefit of creditors.

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

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

B.) Procurement Lobbying Termination

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

5.14 NYS Vendor Responsibility

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

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

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

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

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

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

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

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee

to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

5.15 New York State Vendor File Registration

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

If the Bidder is not currently registered in the Vendor File and is recommended for award, OGS shall request completion of OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. For more information on the vendor file please visit the following website: http://www.osc.state.ny.us/vendor_administration . Form to be completed: http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf

5.16 Ethics Compliance

All bidders/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 the Contract, 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.

5.17 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.

5.18 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.

5.19 Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/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.

Bidders/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, bidders/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 bidders/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.

5.20 Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:

http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Bidders/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 of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

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

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

13. <u>CONFLICTING TERMS</u>. 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. <u>GOVERNING LAW</u>. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. <u>LATE PAYMENT</u>. 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. <u>NO ARBITRATION</u>. 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. <u>SERVICE OF PROCESS</u>. 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. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

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

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

Appendix B
Required Procurement Forms

Required 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
- Contract Consultant Forms A and B
- Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance

Contractor Information

SOLICITATION NUMBER ____

_____ _____

(Authorized Signature) (Date)

_____ _____

(Print Name) (Title)

_____ _____

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

_____

(NYS Vendor I.D. Number)

_____

(Address)

_____

(City, State, Zip)

_____

(County)

_____Ext. _____ _____Ext._____

(Telephone Number) (Toll Free Phone)

_____ _____

(Fax Number) (Toll Free Fax Number)

_____

(E-mail)

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

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

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

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

Will New York State Businesses be used in the performance

of this contract? Circle One: Yes No
If yes, identify New York State Business(es) that will be used; (Attach identifying information).

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

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF **}**

: ss.:

COUNTY OF **}**

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

Town of_____, County of_____, State of_____, and further that:

[Check One]

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

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

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

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

_____

Notary Public
Registration No.

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

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

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

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

By: _____ Date:_____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

_____

_____

Offerer Disclosure of Prior

Non-Responsibility Determinations

Background:

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

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

Instructions:

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

Offerer Disclosure of Prior Non-Responsibility Determinations

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

Address: _____
_____

Name and Title of Person Submitting this Form: _____
_____

Contract Procurement Number: _____

Date:_____

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

No ___ Yes ___

If yes, please answer the next questions:

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

No ___ Yes ___

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

No ___ Yes ___

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____
_____
_____
_____
_____
_____
_____
_____

(Add additional pages as necessary)

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

No ___ Yes ___

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

_____

_____

_____

_____

_____

_____

_____

(Add additional pages as necessary)

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

By:_____ Date:_____

Signature

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

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

Offerer Certification:

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

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

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

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

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

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

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

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

DIESEL EMISSION REDUCTION ACT

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (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 the deadline provided in the 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 the Law, to be used under this contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

SMALL BUSINESS CERTIFICATIONS

State Finance Law § 163(1)(j) (Authorizes Award of Quantitative Factor Credit for Small Business Status in Evaluation for Best Value Contracts)
For purposes of New York State Finance Law § 163(1)(j), the contractor certifies that it:

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

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

"Small business" is defined under New York State Executive Law § 310(20) as a business that:

A. has a significant business presence in New York demonstrated through one of the following:
   1. pays taxes in New York State, or
   2. purchases New York State products or materials, or
   3. has any payroll in New York State
B. is independently owned and operated;
C. is not dominant in its field; and,
D. employs less than 300 persons.

State Finance Law § 163(6) (Authorizes Discretionary Purchases of Commodities or Services from Small Business Concerns)
For purposes of New York State Finance Law § 163(6), the contractor certifies that it:

__ IS NOT a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

__ IS a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

"Small Business Concern" or "Small Business" is defined under New York State Finance Law § 160(8) as a business that:

A. is resident in New York State;
B. is independently owned and operated;
C. is not dominant in its field; and
D. employs 100 or less persons.

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

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

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)

ST-220-CA

(12/11)

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

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

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(name) *(title)*

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an **X** *in only one box)*

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

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 _____

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

Instructions

General information

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

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

When to complete this form

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

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

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ____ day of _____ in the year 20___ , before me personally appeared_____ ,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____; and further that:

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

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

☐ (If a corporation): _he is the_____

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

☐ (If a partnership): _he is a _____

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

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

_____
Notary Public

Registration No.
_____

Privacy notification

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

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

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

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

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

Need help?

Visit our Web site at ***www.tax.ny.gov***
- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889

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

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

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

Department of Taxation and Finance

Contractor Certification

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

ST-220-TD

(4/15)

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

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

Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )
Covered agency or state agency	Contract number or description	Covered agency telephone number ( )
Covered agency address	City / State	ZIP code

Is the estimated contract value over the full term of the contract (but not including renewals) more than $100,000?

Yes ☐ No ☐ Unknown at this time ☐

General information

Tax Law section 5-a, 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 Form ST-220-CA, *Contractor Certification to Covered Agency,* certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

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

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

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

Mail completed form to:

NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?

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

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

Telephone assistance

Sales Tax Information Center:	(518) 485-2889
To order forms and publications:	(518) 457-5431
Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY):	(518) 485-5082

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

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

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

Section 1 – Contractor registration status

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

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

Sworn to this____ day of _____ , 20 _____

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

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

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

A Relationship to contractor	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration in progress

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

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

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

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ____ day of _____ in the year 20___ , before me personally appeared _____ ,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_ he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____; and further that:

*(Mark an **X** in the appropriate box and complete the accompanying statement.)*

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

☐ (If a corporation): _he is the _____

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

☐ (If a partnership): _he is a _____

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

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

_____
Notary Public

Registration No. _____

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 or to enroll, go directly to the VendRep System online at https://portal.osc.state.ny.us.

EMPLOYEE INFORMATION TO BE REPORTED BY CERTAIN CONSULTANT CONTRACTORS

Instructions for Completing Form A and B

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

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

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

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

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

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

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

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

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

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

FORM A

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

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

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

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

FORM B

OSC Use Only:
Reporting Code:
Category Code:

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

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

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

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

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

Use additional pages if necessary) Page of

NEW YORK STATE OF OPPORTUNITY | Office of General Services | Division of Service-Disabled Veterans' Business Development

Attachment

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

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:

http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Bidders/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 of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

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

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

Bidders/proposers can demonstrate their commitment to the use of SDVOBs by responding to the questions below and including the responses with their bid/proposal:

Are you a bidder/proposer that is a NYS-certified SDVOB? ☐ Yes ☐ No **If yes, what is your DSDVBD Control #?** _____

Will NYS-certified SDVOBs be used in the performance of this contract? ☐ Yes ☐ No

If yes, identify the NYS-certified SDVOBs that will be used below (if more than 4 identified, please attach an additional form):

NYS-Certified SDVOB 1:

Name

Address

Control #	Contract #	Total % Work Performed	$ Amount

Nature of Participation

NYS-Certified SDVOB 2:

Name

Address

Control #	Contract #	Total % Work Performed	$ Amount

Nature of Participation

NYS-Certified SDVOB 3:

Name

Address

Control #	Contract #	Total % Work Performed	$ Amount

Nature of Participation

NYS-Certified SDVOB 4:

Name

Address

Control #	Contract #	Total % Work Performed	$ Amount

Nature of Participation

Contractor will report on ***actual*** participation by each SDVOB during the term of the contract to the contracting agency/authority on a quarterly basis according to policies and procedures set by the contracting agency/authority.

NOTE: Information about set asides for SDVOB participation in public procurement can be found at: http://www.ogs.ny.gov/Core/SDVOBA.asp, which provides guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.

Appendix C

Sample Contract

Solicitation No. 1996

SAMPLE

STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
on behalf of
STATE OF NEW YORK DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY SERVICES
AGREEMENT FOR
RAILROAD TANK CAR FIRE TRAINING PROP
AT NEW YORK STATE ACADEMY OF FIRE SCIENCE, IN MONTOUR FALLS, NY
WITH
(CONTRACTOR)
CONTRACT # C00XXXX

SAMPLE

THIS AGREEMENT, made this ____ day of _____, 2016 by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "Commissioner", "DHSES" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at _____.

W I T N E S S E T H:

WHEREAS, the OGS, on behalf of the State of New York Department of Homeland Security and Emergency Services (hereinafter "DHSES"), is responsible for developing a Railroad Tank Car Fire Training Prop located at the New York State Academy of Fire Science in Montour Falls, New York (hereinafter the "State Office Building") and in fulfilling its responsibility deems it necessary to obtain a developed railroad tank car fire training prop, and

WHEREAS, DHSES has determined after having solicited proposals from proposers willing to supply these services, that the Contractor submitted the proposal affording the State the best price for such services and that the Contractor possesses the necessary capacity, experience and expertise to develop a railroad tank car fire training prop, 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

DHSES shall pay the Contractor for all railroad tank car fire training prop 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 $XXX. Services performed beyond this amount will not be compensated.

2. TERM

This Agreement shall commence upon OSC approval and will be in effect for one year, unless sooner terminated as herein specified.

3. SERVICES

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Invitation for Bids No. 1996, 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 Department of Homeland Security and Emergency 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, DHSES 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, DHSES 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 DHSES 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 Department of Homeland Security and Emergency Services, its agents and

SAMPLE

employees therefore for lost profits or any other damages.

B.) Procurement Lobbying Termination

The Department of Homeland Security and Emergency 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, DHSES 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 DHSES 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 Homeland Security and Emergency Services.

10. LAW

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

11. CONDITIONS PRECEDENT

SAMPLE

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 #1996 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 Invitation for Bid 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

SAMPLE

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 DHSES 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 DHSES 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 DHSES under this Agreement**.**

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

SAMPLE

- 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 DHSES.

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

- In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify DHSES and commence an investigation in cooperation with DHSES 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 DHSES following the discovery that DHSES's system security has been breached.

- Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from DHSES 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. <u>CONTRACTOR RESPONSIBILITY</u>

SAMPLE

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of DHSES 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 DHSES 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 DHSES 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 DHSES officials or staff, the Contract may be terminated by the Commissioner of DHSES or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of DHSES or her designee to be non-responsible. In such event, the Commissioner of DHSES 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. C00XXXX

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

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

(**Company Name**)

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

THE PEOPLE OF THE STATE OF NEW YORK

By:_____
Name:
Title:
Date:

APPROVED AS TO FORM
Eric Schneiderman
Attorney General

APPROVED
Thomas P. DiNapoli
State Comptroller

SAMPLE

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }

: SS.:

COUNTY OF }

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

[Check One]

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

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

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

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

_____

Notary Public

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

SAMPLE

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]

SAMPLE

Appendix B

Invitation for Bid

SAMPLE

Appendix C

Contractor's Proposal

SAMPLE

Exhibit 1

Example Live Fire Photos and Control Station

BNSF 9335

Attachment 1

Bid Proposal Form

BID PROPOSAL FORM

NYS Office of General Services
Financial Administration
32nd Floor, Corning Tower
Albany, NY 12242

CONTRACT #:_____
(to be completed by agency)

Company Name_____Date _____

The above Bidder agrees to develop a rail tank car based live fire training prop to be located at the New York State Academy of Fire Science in Montour Falls, New York in accordance with the terms, conditions and specifications as specified in **IFB #1996:**

***Each requirement listed in the IFB must be accounted for in your total bid amount.**

Item	Service	Estimated completion date	Quantity	UOM	Total Price
1	One (1) fully developed tank car as specified in Section 4, Scope of Work	May 1st, 2017	1	JOB	$
			TOTAL Item 1		$

Additional Services, per Section 4.3

Item # 2 - Additional Services Hourly Rate = $_____ x ___20___estimated hours =

Item 2 Total $_____

Item # 3 - Estimated Material Cost = $ ____2,500_____ PLUS mark up of _____% =

Item 3 Total $_____

TOTAL BID (Total Item 1 + Total Item 2 + Total Item 3) =

$_____

Warranty on parts and labor must be a minimum of one (1) year as specified in Section 4.6, Warranties.

All Bids must be signed by a person authorized to commit the bidder to the terms of the bid documents and the content of the bid (offer). Electronically-signed documents are not acceptable.

By signing you certify your full knowledge and acceptance of this Invitation for Bid, Appendix A (Standard Clauses For New York State Contracts), and State Finance Law §139-d, §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate.

_____ _____

Signature Date

_____

Print Name/Title

Attachment 2

Site Visit Verification Form

SITE VISIT VERIFICATION FORM

To be submitted with Bid

I,_____,representing_____
(name) (company name)

by personal examination of the specification and review of the actual work to be performed at the

_____
(facility name and address)
_____

on _____, at, _____, met
(day and date) (time)

With the Facility Manager and designated representative to comply with the site visit verification requirement as stated in the contract specification.

_____, _____
(company representative signature) (date)

____ _____
(EMAIL ADDRESS)

FOR THE OFFICE OF GENERAL SERVICES' USE ONLY

Verification of site visit confirmed by OGS representative.

Print Name: _____

Title: _____

Signature: _____