

**TABLE OF CONTENTS**

**SECTION 1 - TERMS AND CONDITIONS .....3**

1.1 CONTRACT TERM ..... 3

1.2 MODIFICATION OF CONTRACT ..... 3

1.3 EXECUTORY PROVISION/CONTRACT FORMATION ..... 3

1.4 INTEGRATION, MERGER, AND ORDER OF PRECEDENCE ..... 3

1.5 CONTRACTOR RESPONSIBILITIES, QUALIFICATIONS, AND CHANGE IN STATUS ..... 3

1.6 INDEPENDENT CONTRACTOR ..... 5

1.7 CONTRACTOR PERSONNEL ..... 5

1.8 BACKGROUND CHECKS ..... 5

1.9 EMPLOYMENT REPORTING REQUIREMENTS ..... 5

1.10 COOPERATION WITH THIRD PARTIES ..... 5

1.11 COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS ..... 6

1.12 WORK OUTSIDE THE SCOPE OF THE CONTRACT ..... 6

1.13 NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR’S  
PERFORMANCE ..... 6

1.14 NOTICE ..... 6

1.15 PRICING, BILLING, AND PAYMENT FOR SERVICES ..... 6

1.16 ELECTRONIC PAYMENT REQUIREMENT ..... 7

1.17 WARRANTIES AND GUARANTEES ..... 7

1.18 INDEMNIFICATION AND LIMITATION OF LIABILITY ..... 8

1.19 COMPLIANCE WITH LAWS ..... 8

1.20 SUSPENSION OF WORK ..... 10

1.21 TERMINATION ..... 10

1.22 TRANSITION ..... 11

1.23 CONTRACTOR RESPONSIBILITY IN THE EVENT OF AN EMERGENCY ..... 12

1.24 FORCE MAJEURE ..... 13

1.25 DISPUTE RESOLUTION ..... 13

1.26 GENERAL PROVISION AS TO REMEDIES ..... 13

1.27 ADDITIONAL REMEDIES ..... 13

1.28 INSURANCE ..... 13

    1.28.1 Compliance with Workers’ Compensation and Disability Coverage Requirements ..... 15

1.29 TAXES ..... 15

1.30 OUTSTANDING TAX LIABILITIES ..... 16

1.31 SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES & FOIL ..... 16

1.32 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION  
OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESS  
ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS  
AND WOMEN ..... 18

1.33 ETHICS COMPLIANCE ..... 21

1.34 MOST FAVORABLE TERMS ..... 21

1.35 TRANSFER OF CONTRACT ..... 21

1.36 SUBCONTRACTORS ..... 21

1.37	WAIVER.....	21
1.38	ACCESSIBILITY .....	22
1.39	FEDERAL FUNDING.....	22
1.40	COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS.....	22
1.41	SEVERABILITY .....	23
1.42	PIGGYBACKING .....	23
1.43	NOTIFICATION OF AWARD AND OPPORTUNITY FOR DEBRIEFING .....	23
1.44	ITS BID PROTEST POLICY.....	23
1.45	STATE’S RESERVED RIGHTS.....	23
1.46	BID LIABILITY AND LATE SUBMISSIONS .....	24
1.47	BID VALIDITY .....	24
1.48	BID RESULT NOTIFICATIONS .....	24
1.49	EXTRANEIOUS TERMS AND CONDITIONS.....	24
1.50	ACCURACY OF BIDS .....	25
1.51	PRIME BIDDERS, SUB CONTRACTORS AND CONTRACTOR OBLIGATIONS.....	25
1.52	STATE FINANCE LAW SECTION 139-I REQUIREMENT FOR CONTRACTS OF \$1,000,000 OR MORE .....	25
1.53	SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING .....	26
1.54	NEW YORK STATE VENDOR FILE REGISTRATION.....	26
1.55	NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINESS ENTITY .	26
1.56	USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN CONTRACT PERFORMANCE.....	27
1.57	EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS.....	27

## **SECTION 1 - TERMS AND CONDITIONS**

The Procurement, the Bidder's Proposal, and the contract award that results from this Request for Proposal (RFP) are subject to and incorporate the following terms and conditions.

### **1.1 CONTRACT TERM**

The term of the Contract shall be five (5) years. The Contract shall take effect and commence upon the approval of the Contract by the Office of the State Comptroller of the State of New York ("OSC" or "Comptroller"), as applicable.

### **1.2 MODIFICATION OF CONTRACT**

The State reserves the right to renegotiate the terms and conditions of the Contract in the event that applicable New York State or federal laws, statutes, rules, regulations, policies, and/or guidelines are altered from those existing at the time the Contract is approved by the Comptroller in order to ensure continuous compliance therewith. The Contract is subject to amendment only upon mutual consent of the parties, reduced to writing and approved by the State's Attorney General and Comptroller. Contractor warrants that it will comply with all laws, ordinances, rules, and regulations.

### **1.3 EXECUTORY PROVISION/CONTRACT FORMATION**

The State Finance Law of the State of New York, Section 112, requires that any contract entered into by a State Agency with a value in excess of fifty thousand dollars (\$50,000) must first be approved by OSC before becoming effective. The Parties recognize that the Contract is wholly executory until approved by the Comptroller.

### **1.4 INTEGRATION, MERGER, AND ORDER OF PRECEDENCE**

The Contract shall be comprised solely of the following documents. In the event of an inconsistency or conflict in terms, precedence shall be given in the order indicated:

- Appendix A -Standard Clauses for New York State Contracts
- Any Amendments to the Contract
- The Contract and clarifying documents, if any, setting forth the final agreements, clarifications, and terms between the Request for Proposal and Contractor's Bid
- This ITS Request for Proposal and all its attachments
- Contractor's Proposal

Only those documents expressly indicated above shall be deemed a part of the Contract, and references contained in those documents to additional Contractor documents not referenced above, shall be of no force and effect.

All prior agreements, representations, statements, negotiations, and undertakings are superseded.

The terms, provisions, representations, and warranties contained in the Contract shall survive performance hereunder.

### **1.5 CONTRACTOR RESPONSIBILITIES, QUALIFICATIONS, AND CHANGE IN STATUS**

- **Responsibilities**

The Contractor is responsible for providing Services in accordance with the specifications set forth in the RFP and for meeting all Contract obligations set forth in the Contract, including all Exhibits, and any subsequent amendments mutually agreed to in writing by the Parties. Contractor is also responsible for all services, functions, processes and responsibilities, whether or not specifically described in the Contract, which are required, implied, or inherent for all services provided hereunder to be performed in a workmanlike manner.

- **Qualifications**

Contractor acknowledges that the Contract is being entered into by the State in reliance on Contractor's Bid and its representations concerning the particular qualifications, experience, management, and technical expertise of the Contractor and its personnel, and the pricing for same.

- **Substantial Change in Contractor Status**

Throughout the Contract term and any extensions, in addition to the requirements of NYS Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change, as defined below, in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries or divisions, or partners. Such notice, and details of any such change, shall be provided in writing immediately when such is first known by Contractor, its Affiliates, subsidiaries or divisions, or subcontractors.

"Substantial" change shall refer to sales, acquisitions, mergers or takeovers involving the Contractor, its Affiliates, subsidiaries or divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid; entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a receiver of Contractor's business or property or that of its Affiliates, subsidiaries or divisions, or partners; or action by Contractor, its Affiliates, subsidiaries or divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or court ordered liquidation against Contractor, its Affiliates, subsidiaries or divisions, or partners.

Upon the State's receipt of such notice, the State shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries or divisions, or partners, or to any other person or entity, without the express written consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to cancel the Contract, in whole or in part, for cause if it finds, in its sole judgment, that such substantial change adversely affects the delivery of engagement Services or is otherwise not in the best interests of the State.

- **Vendor Responsibility - General**

It shall be a requirement of this Contract that Contractor continue to be a responsible Bidder, within the meaning of the State Finance Law, relevant case law and applicable guidelines, throughout the term of the Contract and any extensions. The Contractor agrees to present evidence of its continuing legal authority to do business in NYS, integrity, experience, ability, prior performance, and organizational and financial capacity, if requested by the Director of ITS or his or her designee. Upon request by ITS, Contractor shall update the information provided in the Vendor Responsibility Questionnaire submitted with its Bid within ten (10) business days of such request.

- **Suspension of Work for Non-Responsibility**

The Director of ITS, or his 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 CIO/Director of ITS, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.

- **Termination for Non-Responsibility**

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate ITS officials or staff, the contract may be terminated by the Director of ITS, or his or her designee, at the Contractor's expense, where the Contractor is determined by the Director of ITS, or his or her designee to be Non-Responsible. In such event, the Director of ITS, or his 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.

#### **1.6 INDEPENDENT CONTRACTOR**

Contractor is an independent Contractor, and its officers, employees, subcontractors and agents shall act in such an independent capacity and not as officers or employees of the State in the performance of the Contract. They are not employees of the State and are not entitled to any of the benefits associated with such employment.

#### **1.7 CONTRACTOR PERSONNEL**

All Contractor's officers and employees, subcontractors, or agents performing work under the Contract must meet or exceed the technical and training qualifications set forth in the RFP or the Bid, whichever is higher, and must comply with all security and administrative requirements of ITS. ITS may refuse access to or require replacement of any Contractor employee that ITS determines poses a security risk, has a work performance that ITS finds inadequate or unacceptable, or otherwise fails to meet ITS business requirements or expectations.

#### **1.8 BACKGROUND CHECKS**

All Contractor employees or subcontractors that perform services under this Contract must undertake and complete a full New York State Police fingerprint background investigation process, which will include a federal criminal justice site security check, as required by ITS or NYS law, rules and regulations prior to providing services. Any costs associated with the background checks, including related travel, will be borne by Contractor. ITS, in its sole discretion, may reject or bar from any State facility any employee or agent of the Contractor or its subcontractors performing work under this Contract, and such action by ITS shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

#### **1.9 EMPLOYMENT REPORTING REQUIREMENTS**

To the extent that this is a consulting services contract as described in §8(17)(f) of the New York State Finance Law, Contractor shall comply with all ITS requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Furthermore, all subcontracts entered into by Contractor for purposes of performing the Contract shall contain a provision whereby subcontractors agree to comply with ITS requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Reports and forms filed by Contractor pursuant to this section shall be available for public inspection and copying under the provisions of the Freedom of Information Law (FOIL).

#### **1.10 COOPERATION WITH THIRD PARTIES**

Upon the request of the State, the Contractor shall be responsible for fully cooperating with any third party, including but not limited to other contractors or subcontractors of the State, relating to the delivery or coordination of Services.

### 1.11 COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS

Upon the request of ITS, the Contractor shall cooperate with the State in any investigation, audit, or other inquiry related to the Procurement or the resulting Contract or any litigation relating thereto, at no cost to ITS or the State. This provision shall survive the termination of the Contract.

### 1.12 WORK OUTSIDE THE SCOPE OF THE CONTRACT

The Contractor must not perform work outside the scope of the Contract, unless such work is authorized by a properly executed, Comptroller-approved written amendment to the Contract. Any work not so authorized will not be compensated.

### 1.13 NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE

The Contractor shall immediately notify ITS upon learning of any situation that can reasonably be expected to adversely affect the delivery of Services under the Contract. If such notification is verbal, the Contractor shall follow such initial verbal notice with a written notice to ITS which shall include a description of the situation and a recommendation of a resolution within three (3) calendar days of Contractor's becoming aware of the situation.

### 1.14 NOTICE

All notices given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered. Such notices shall be addressed as set forth below, or to such different addresses as the parties may from time-to-time specify by written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

For the NYS Office of Information Technology Services:

Procurement and Contract Support Unit  
NYS Office of Information Technology Services  
Empire State Plaza, PO Box 2062  
Albany, NY 12220-0062

For Contractor:

[Name]  
[Title]  
[Street Address]  
[City, State, Zip code]  
Telephone Number: ( )

Additional individuals may be designated, in writing, by the parties for purposes of communications related to administration/billing, problem resolution, and/or for dispute resolution.

### 1.15 PRICING, BILLING, AND PAYMENT FOR SERVICES

Payments for Services rendered shall be in accordance with the Contract. All rates must be inclusive of any and all direct and indirect costs including contract administrator, clerical personnel, travel, computer charges, postage and all other expenses related to the engagement. ITS will not pay overtime rates for hours worked over 40 per week.

Contractor shall invoice ITS monthly, in arrears, for all Services rendered with appropriate detailed invoices in a form agreed to and as directed by ITS. The Comptroller shall render payment for invoices under this Contract in accordance with ordinary State procedures and practices.

#### 1.16 ELECTRONIC PAYMENT REQUIREMENT

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

#### 1.17 WARRANTIES AND GUARANTEES

- A. **Contract Deliverables.** Contractor warrants and represents that the Services required by the RFP and the Contract shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in this Contract.
- B. **Compliance with laws.** Contractor warrants and represents that, throughout the term of the Contract and any extensions, Contractor shall meet or exceed all requirements of the Contract and any applicable laws, including but not limited to those related to insurance, and agrees to provide such proof as required by ITS.
- Contractor warrants and represents that, throughout the term of the Contract and any extensions, and in the performance of obligations under the Contract, it will: (i) comply with all applicable laws, ordinances, rules and regulations of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity. Failure to do so may constitute grounds for ITS to terminate or suspend this Contract, in whole or in part, or to take any other action deemed necessary by ITS.
- C. **Workmanship Warranty.** Contractor warrants and represents that all components or deliverables specified and furnished by or through Contractor under the Contract shall meet the completion criteria set forth in the Contract and any subsequent personnel request documents, and that Services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards. Failure to do so may result in the State finding that Contractor is in default of its Contract obligations.
- D. **Personnel Eligible for Employment.** Contractor warrants and represents that all personnel performing Services under this Contract are eligible for employment in the United States and shall remain so throughout the term of the Contract and any extensions. Contractor shall provide such proof of compliance as is required by ITS.
- E. **Service Guarantee.** Contractor's failure to satisfy performance standards or requirements set forth herein may result in a credit or chargeback in an amount pre-determined by the parties. The Chargeback shall be paid to ITS in the form of a credit to ITS against the Contractor's invoice submitted to ITS immediately following the month in which the Contractor failed to satisfy the standard or requirement.
- F. **Survival of Warranties.** All warranties contained in the Contract shall survive the termination of the Contract.

**Limitations:** THE WARRANTIES SET FORTH IN THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### 1.18 INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither Party shall be liable for any delay or failure in performance resulting from a force majeure event. The Parties shall use all reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors, if any, and shall fully indemnify and save harmless the State and ITS from suits, actions, damages, and costs of every name and description relating to personal injury and damage to real or personal property caused by Contractor, its agents, employees, partners, or subcontractors, if any, without limitation; provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.

Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the Products furnished or utilized, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Director shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by ITS, without Contractor's approval, of any Product provided by Contractor pursuant to this Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation," and regardless of the basis on which the claim is made, Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: (i) \$1,000,000 (One Million Dollars); or (ii) two (2) times the amounts paid to the Contractor under the Contract during the twelve (12) months of the contract term which precedes the giving of notice of the claim by the State. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State. Unless otherwise specifically enumerated herein, neither Party shall be liable to the other for special, indirect, or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue, or lost institutional operating savings.

The State may, in addition to other remedies at law or equity, and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the State.

The State does not agree to any indemnification provisions that require the State to indemnify or save harmless Contractor or third parties.

#### 1.19 COMPLIANCE WITH LAWS

The Contractor shall comply with all present and future applicable laws, codes, ordinances, statutes, rules, and regulations with respect to any of the duties or responsibilities of the Contractor arising from the Contract, including but not limited to the Americans with Disabilities Act (42 USC Section 12101, et seq).

To the extent that ITS is the recipient of any federally funded monies relating to the procurement of Services or Products under the RFP and Contract, Contractor agrees to comply with all applicable federal laws, rules and regulations, including but not limited to the following areas as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95 relating to:

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84 and 90, and 7 CFR Parts 15, 15b and 15d.
- b. Copeland "Anti-Kickback Act" (18 USC 874 and 40 USC 276c) which provides that all contracts/sub-grants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit Contractors or sub-recipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the Federal awarding agency.
- c. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) which requires all construction contracts awarded by recipients of more than \$2000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each solicitation and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the Federal awarding agency.
- d. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers require compliance with 40 U.S.C. 327-333 as supplemented by USDOL Regulations 29 CFR 5 when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- e. Rights to Inventions Made under a Contract or Agreement- Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by USDHHS or USDA.
- f. Ownership Rights in Software or Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation, provided, however, that this sentence shall not apply to 'proprietary operating/vendor software packages' within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii).
- g. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.), which require Contracts and sub-grants in excess of \$100,000 shall require the recipient to comply with the Acts recited herein and that violations must be reported to USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- h. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- which requires that every Contractor under a contract for more than \$100,000 and every tier of Contractors or subcontractors thereunder shall file certification, as required, that said Contractor will not and has not used any Federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or award covered by such Amendment. A Contractor or

subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93)

- i. Debarment and Suspension. (Federal E.O.s 12549 and 12689)- Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with E.O.s 12549 and 12689. (See 45 CFR 76.) Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- j. Contractor shall make positive efforts to assure that small businesses and minority and women owned business enterprises (M/WBEs) are utilized when possible as sources of supplies, equipment, construction and services. If any subcontracts are to be let, Contractor shall (1) include qualified small businesses and M/WBEs on solicitation lists; (2) assure that they are solicited whenever they are potential sources; (3) when economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small business and M/WBE participation; (4) where the requirement permits, establish delivery schedules which will encourage participation by small businesses and M/WBEs, and; (5) use the services and assistance of the New York State Department of Economic Development [(518) 292-5100 or Web Site [www.empire.state.ny.us](http://www.empire.state.ny.us)], the US Small Business Administration, the Office of Minority Business Enterprise of the US Department of Commerce and the US Community Services Administration, as appropriate.

## 1.20 SUSPENSION OF WORK

ITS reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State or ITS. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Contractor shall be paid for services performed prior to suspension in accordance with the Contract. Activity may resume at such time as ITS issues a formal written notice authorizing a resumption of work.

## 1.21 TERMINATION

### A. For Convenience

The State retains the right to cancel the Contract without cause, provided that Contractor is given at least thirty (30) calendar days' notice of the State's intent to cancel without penalty to the State or imposition of other early termination charges. 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. In the event of cancellation without cause by the State, the State agrees to negotiate a payment for Services performed by the Contractor prior to termination.

### A. For Cause

For any material breach or failure of performance of the Contract by the Contractor, the State may provide written notice of such breach or failure. The State may terminate the Contract if the Contractor does not cure such breach or failure within thirty (30) calendar days after the giving of written notice to cure.

No delay or omission to exercise any right, power, or remedy accruing to the State or ITS upon breach or default by the Contractor under the Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under the Contract, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Contract, Contractor shall be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue.

**B. For Suspension or Delisting of Contractor's Securities**

If the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable, if the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract in accordance with the Contract or exercise such other remedies as shall be available under the Contract, at law and/or equity.

**C. For Vendor Responsibility Related Findings**

ITS may, in its sole discretion, terminate the Contract if it finds at any time during the term of the Contract that the Contractor is non-responsible, or that any information provided in the Vendor Responsibility Questionnaire submitted with Contractor's Bid was materially false or incomplete, or if the Contractor fails to timely or truthfully comply with ITS's request to update its Vendor Responsibility Questionnaire.

**D. Termination Notice**

Notices required by this section shall be delivered to the other party in writing, pursuant to the Notice provisions of the Contract.

**E. Termination Date**

In the event a notice of termination is issued for convenience, the Contract termination date shall be thirty (30) calendar days from the date notice is given in accordance with the Notice provisions of this Contract. The termination date for material breach or failure of performance shall be the date notice is given in accordance with the Notice provisions of this Contract.

**F. Mitigation of Costs**

The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of notice of termination and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

**1.22 TRANSITION**

The State may require the Contractor to provide uninterrupted Services after Contract termination/expiration ("Transition Services") as the State deems reasonable and necessary for the State to comply with all legal requirements for establishing a new contract and transition to the use of a replacement Contractor or otherwise continue the provision of Services.

**A. Transition Period**

The Transition Period shall be determined by the State, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to amend the Transition Period subsequently, upon thirty (30) days' advance written notice to the Contractor.

**B. No Interruption in Service**

At all times during the Transition Period, and unless directed otherwise in writing by the State, the Contractor shall continue all contractual obligations set forth in the Contract until such time as the State: (i) has approved the Contractor's proposed Transition Plan; and (ii) an orderly transition to the State, a third party, or the successor Contractor has been completed pursuant to the approved Transition Plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

**C. Transition Plan**

Within fifteen (15) days of receipt of a notice of termination or three (3) months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall submit to the State for approval a detailed written plan for Transition (Transition Plan) that outlines, at a minimum, the tasks, milestones, and deliverables associated with the smooth transition of Services to the State, a third party or a successor Contractor. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the State.

**D. Contractor Transition Services**

Transition Services shall include the performance of Contractor's responsibilities as outlined in the Contract, and also the transferring of those responsibilities to the State, a third party or the successor Contractor in accordance with the Transition Plan agreed upon by the Parties. Contractor shall maintain the same level of service during the Transition Period as is set forth in the Contract, provided, however, that as tasks or services are transitioned to or assumed by the State, a third party or the successor Contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of the State, a third party or the successor Contractor or for service degradation resulting from the negligent acts or negligent omissions of the State, a third party or the successor Contractor with respect to the transitioned tasks or services.

**E. Compensation for Transition Services**

Contractor shall be reimbursed for Transition Services performed during the Transition Period at the rates set forth in the Contract.

**F. State Responsibilities for Transition**

The State shall assume responsibility for transition project management.

**G. Cooperation**

Contractor shall cooperate with the State to facilitate a smooth and orderly transition. Periodic project review meetings shall be held with representatives of the Contractor, the State, and the third party or the successor Contractor.

**1.23 CONTRACTOR RESPONSIBILITY IN THE EVENT OF AN EMERGENCY**

For purposes of this section, the following definitions of an Emergency shall apply: "state disaster emergency" shall have the same meaning as set forth in section 20(2)(b) of the Executive Law and "other emergency situation" shall refer to a situation or occurrence which the CIO/Director of ITS or designee, in his/her sole discretion, has determined poses a risk to health and public safety or the conservation of public resources.

In the event of a state disaster emergency or other emergency situation, the Contractor shall be notified that ITS is invoking this provision.

Unless the Contractor's performance would be excused pursuant to the Force Majeure provisions of the Contract during a state disaster emergency or other emergency situation the Contractor shall provide the necessary services to the State on a time is of the essence basis, working on a 24x7x365 basis, to restore

and/or recover operation and services, which are critical to the health, safety and welfare of the State, to be determined at the sole discretion of the State.

Except as provided in this section, all other provisions of the RFP and Contract remain in full force and effect during a state disaster emergency or other emergency situation.

#### **1.24 FORCE MAJEURE**

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, or labor dispute, or any other acts beyond the reasonable control of either Party (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party, and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the State and Contractor. Any delay in performance by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract.

#### **1.25 DISPUTE RESOLUTION**

The Contractor and the State agree to resolve any disputes regarding the performance of Services, or otherwise arising under the Contract, expeditiously through an escalation process to be agreed upon by the Parties. Dispute resolution meetings between the Parties shall be held within three (3) business days in the event a dispute threatens the performance of a material portion of the Service, with senior management engagement, as needed. During the course of a dispute, Contractor shall continue to provide Services according to the Contract until such dispute is resolved.

Nothing in this paragraph shall diminish the State's right to terminate the Contract as provided in the Contract.

#### **1.26 GENERAL PROVISION AS TO REMEDIES**

The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Contract.

#### **1.27 ADDITIONAL REMEDIES**

In addition to any other remedies available to ITS under the Contract and state and federal law for Contractor's default, ITS may choose to exercise some or all of the following:

- Suspend, in whole or in part, payments due to Contractor under this Contract;
- Pursue equitable remedies to compel Contractor to perform;
- Apply Service Credits against amounts due and owing by ITS under the Contract;
- Require Contractor to cure deficient performance or failure to meet any requirements of the RFP at no charge to the State.

#### **1.28 INSURANCE**

The Contractor shall furnish ITS with Certificates of Insurance evidencing compliance with all insurance requirements of this Section. Such Certificates shall be in form and substance acceptable to ITS, and ITS

may also ask to review the insurance policies to check that the coverage afforded by the policies matches the Contractor-provided Certificates of Insurance. Acceptance of Certificates of Insurance by ITS shall not diminish any of Contractor's obligations, responsibilities or liabilities under the Contract. All insurance required by the Contract shall be specifically and exclusively for the performance of Contractor's obligations under the Contract, and 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; shall be primary and non-contributing to any insurance or self-insurance maintained by ITS and/or the State of New York; shall be endorsed to provide that written notice be given to ITS at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policy or policies, which notice, evidenced by return receipt of United States Certified Mail, shall be sent to ITS. The insurance policy(ies) shall name the State of New York, its officers, agents, and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85**). The additional insured requirement does not apply to Workers' Compensation or Disability coverage. The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. 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 the State 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 the 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 ITS with updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of this Contract, or as otherwise required by the 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 the Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate per annum. Such liability shall be written on the ISO occurrence form CG 0001, 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.
- Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- Workers' Compensation, Employers Liability, and Disability Benefits as required by New York State. Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) require that ITS shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with ITS, the successful Bidder shall be required to verify for ITS, on forms authorized by the New York State Workers' Compensation Board, that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL.
- 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 ITS, 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 ITS or (ii) any other form of permission for the release of ITS.

#### 1.28.1 Compliance with Workers' Compensation and Disability Coverage Requirements

An ACORD form is not acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a Contractor shall: i) Be legally exempt from obtaining Workers' Compensation insurance coverage; or ii) Obtain such coverage from an insurance carrier; or iii) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan. Notwithstanding any other requirements of this Section, a Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to ITS at the time of bid submission:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Certificate of Workers' Compensation Insurance:
  - 1) Form C-105.2 (9/07) if coverage is provided by the Contractor's insurance carrier, the Contractor must request its carrier to send this form to ITS, or
  - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, the Contractor must request that the State Insurance Fund send this form to ITS.
- Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Contractor's Group Self-Insurance Administrator.

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a Contractor shall: i) Be legally exempt from obtaining disability benefits coverage; or ii) Obtain such coverage from an insurance carrier; or iii) Be a Board-approved self-insured employer. Notwithstanding any other requirements of this Section, a Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to ITS at the time of bid submission:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)).
- Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to ITS; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

#### 1.29 TAXES

ITS represents that the purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes. Contractor remains liable and solely responsible without exemption for social security, unemployment insurance, workers compensation and other taxes and obligations to which Contractor may be subject to by law. Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State Agency shall not be valid, effective, or binding against the Agency unless the Contractor certifies to the Department of Taxation and Finance that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor 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, the Contractor must certify to the Department of Taxation and Finance that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to

collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring state entity that it filed the certification with the Department of Taxation and Finance and that the certification is correct and complete. Accordingly, in the event the value of this Contract exceeds \$100,000 and Contractor's sales delivered by any means to locations within New York State of tangible personal property or taxable services have a cumulative value in excess of \$300,000, measured over a specific period, the Contractor must file a properly completed Form ST-220-CA with ITS and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Contract may take effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with ITS if the Contract's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of Taxation and Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete. Further information about this requirement is available at <http://www.osc.state.ny.us/agencies/gbull/g222.htm>. Contractor agrees to cooperate fully with the State in administering these requirements.

### 1.30 OUTSTANDING TAX LIABILITIES

Contractor warrants that there are no outstanding tax liabilities against the Contractor in favor of the State of New York, or in the event that such liabilities exist, a payment schedule has been arranged for their speedy satisfaction.

### 1.31 SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES & FOIL

The Contract may be terminated by the State for cause for a material breach of this section by Contractor.

- **Security Procedures & Employee Dishonesty:**

Contractor warrants, covenants and represents that it shall comply fully with all security procedures and policies of the State, including but not limited to fingerprinting and background check procedures, which are communicated to the Contractor by ITS during the performance of the Contract. Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, if any while providing Services under the Contract.

- **Nondisclosure & Confidentiality**

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

1. information that is previously rightfully known to the receiving party without restriction on disclosure;
2. information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and

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

Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information.

Contractor employees and subcontractors shall be required to sign Confidentiality and Non-Disclosure Agreements either before or upon arrival at the work site or prior to providing services under the Contract.

- **Press Releases**

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

- **Public Information and FOIL**

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

- **Federal or State Requirements**

Contractor will comply with federal and state law and regulations regarding personal, private and sensitive data as defined therein.

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

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

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

- **CJIS**

This RFP and its resulting Contract are strictly limited to permitting the Contractor to perform the services as described therein. At no time shall the Contractor access any criminal justice information (including criminal history record information or other sensitive criminal justice information), as defined by the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy (the "CJIS Security Policy") (annexed hereto as Appendix D), contained on NYS Systems or media without complying with this Section. Any access to computer media/systems which contain criminal justice information including criminal history record information and other sensitive criminal justice information is subject to the CJIS Security Policy and its related Security Addendum (the "SA") (reflected and incorporated in Appendix D2 annexed hereto). The purpose of the SA is to provide adequate security for criminal justice systems and information while under the management or control of a private entity or contractor. The SA strictly limits the authorized access to criminal justice information (including criminal history record information), limits the use of the information to the specific purposes for which it is being provided, ensures the security and confidentiality of the information consistent with applicable laws and regulations, provides for sanctions, and contains such other provisions as required by the FBI Director. Upon selection, the selected bidder and as a condition precedent for providing Services, agrees (1) to abide by the CJIS Security Policy and its related SA, and (2) to the incorporation by reference of the CJIS Security Policy and its related SA as a part of the Contract, (3) that the CJIS Security Policy and its related SA shall be incorporated by reference as a part of all subcontracts entered into by the Successful Bidder for delivery of Services, if any; and (4) that those Successful Bidder employees and subcontractor employees (Contractor Staff), if any that provide Services shall sign the form set forth as Appendix D2 hereto, referenced and incorporated in the CJIS Security Policy as the "Federal Bureau of Investigation Criminal Justice Information Services Security Addendum Certification.". One copy of the signed form will be retained by the Successful Bidder and the original will be provided to the State for retention by the CJIS Information Security Officer for New York State.

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

- **Off Shore restrictions**

Confidential Information accessed by or provided to Contractor during the course of performing services for the State must not be stored or accessed outside of the continental United States.

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

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145 ITS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of NYS Office of Information and Technology Services (ITS) 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" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ITS establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ITS hereby establishes an overall goal of ~~5%~~ **30%** for MWBE participation, ~~5%~~ **15%** for New York State certified minority-owned business enterprises ("MBE") participation and ~~0%~~ **15%** for New York State certified women-owned business enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that ITS may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ITS will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

**Commented [ML1]:** Revised per response to Question #39

In accordance with 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 finding constitutes a breach of Contract and ITS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid, a Bidder on the Contract ("Bidder") agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting Ed Snyder, Procurement & Contracts Support Unit, NYS Office of Information Technology Services. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder's MWBE requirements please see the attached MWBE guidance, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A."

Additionally, a Bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

- An MWBE Utilization Plan with their bid. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ITS.

ITS will review the submitted MWBE Utilization Plan and advise the Bidder of ITS acceptance or issue a notice of deficiency within 30 days of receipt.

- If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Mr. Ed Snyder, Chief Procurement Diversity Officer, NYS Office of Information and Technology Services, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ITS to be inadequate, ITS shall notify the Bidder and direct the Bidder to submit, within

five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid.

ITS may disqualify a Bidder as being non-responsive under the following circumstances:

- If a Bidder fails to submit a MWBE Utilization Plan;
- If a Bidder fails to submit a written remedy to a notice of deficiency;
- If a Bidder fails to submit a request for waiver; or
- If ITS determines that the Bidder has failed to document good faith efforts.

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

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the ITS, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

#### **Equal Employment Opportunity Requirements**

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

The Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, (located in Attachment N) to ITS with their bid.

To ensure compliance with this Section, the Bidder will be required to submit with the bid an Equal Employment Opportunity Staffing Plan Form #EEO100 (located in Attachment N) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting ITS.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, 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.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

Over the course of the resulting contract, the successful proposer will be required to complete the following forms: (1) EEO 101, Workforce Employment Utilization/Diversity Compliance Report (located in Attachment N) (2) MWBE 102, Quarterly MWBE Compliance Report (located in Attachment N).

### **1.33 ETHICS COMPLIANCE**

Contractor, its officers, employees, agents and subcontractors (if any) shall comply with the requirements of Public Officers Law § 73 and § 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

### **1.34 MOST FAVORABLE TERMS**

Contractor agrees that all fees, pricing, terms, and warranties provided by the Contractor under the Contract are substantially similar to the best equivalent terms being offered by the Contractor to any entity similarly situated. If during the term of the Contract, the Contractor enters into an arrangement with any similarly situated entity, Contractor hereby agrees to amend the Contract to provide the same to ITS.

### **1.35 TRANSFER OF CONTRACT**

ITS may transfer/assign the Contract to another State Agency or entity at its sole discretion by informing Contractor in writing of such a transfer. Contractor shall execute any documents required to accomplish the transfer/assignment of the Contract. Contractor shall comply with any instructions from ITS to accomplish the transfer/assignment of the Contract at no additional cost to the State.

### **1.36 SUBCONTRACTORS**

Contractor may not subcontract the services procured under this Contract without ITS' prior written approval. ITS reserves the right to reject any proposed Subcontractor or supplier if it determines that the company is not qualified or is not responsible. All such subcontracting relationships between the Contractor and its subcontractors to perform Services must be memorialized by written agreement.

Contractor shall include in all agreements with its subcontractors, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying:

- That the work performed by the subcontractor must be in accordance with the terms and conditions of this Contract
- That nothing contained in such subcontract shall impair the rights of ITS or the State
- That nothing contained in the subcontract shall create any contractual relationship between the subcontractor and ITS or the State
- That the State and ITS shall have the same authority to audit the records of all subcontractors as it does those of the Contractor
- That subcontractor shall cooperate with any investigation, audit, litigation or other inquiry related to the Procurement or the resulting Contract

### **1.37 WAIVER**

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver of, or excuse

for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity.

### **1.38 ACCESSIBILITY**

Any web-based information and applications development, or programming delivered pursuant to the Contract will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by [State Agency name, Contractor or other] and the results of such testing must be satisfactory to ITS before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

### **1.39 FEDERAL FUNDING**

Contractor agrees to comply with any Federal funding requirements that may be related to this Contract.

### **1.40 COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS**

Contractor warrants, covenants, and represents that it shall comply fully with all security procedures and policies of the State including but not limited to:

- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard
- Information Security Risk Management Standard
- Information Security Controls Standard
- Sanitization/Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard

ITS Security Policies and Standards may be found at  
<http://www.its.ny.gov/tables/technologypolicyindex.htm/security>

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

Contractor agrees that all data provided by NYS or accessed by Contractor under the terms of the engagement shall be used expressly and solely for the authorized purposes set forth in the Contract. Data shall not be distributed, used, repurposed or shared across other applications, environments, or business units of the Contractor. Contractor agrees that no NYS data of any kind shall be transmitted, exchanged or otherwise passed to other contractors, agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by ITS.

Contractor agrees that no NYS data will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the Contract.

#### **1.41 SEVERABILITY**

In the event that one or more of the provisions of the Contract shall for any reason be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

#### **1.42 PIGGYBACKING**

Contractor acknowledges and agrees that, pursuant to State Finance Law § 163(10)(e), the New York State Office of General Services may authorize and approve purchases from contracts let by Contractor to other New York State agencies, the United States Government or any other state, with the concurrence of the Office of the State Comptroller and under appropriate circumstances.

#### **1.43 NOTIFICATION OF AWARD AND OPPORTUNITY FOR DEBRIEFING**

The tentative awardee will be advised of selection by ITS through the issuance of a formal written correspondence indicating a proposed award. All Bidders will be notified of the selection or rejection of their bids. Once an award has been made, Bidders may submit a written request for a debriefing as to why their bid did not result in an award. The written request must be received by the ITS Sole Designated Contact identified on the cover page of this RFP no later than ten (10) business days from the date of the award announcement. The purpose of the debriefing is to provide information to each Bidder about the scoring and evaluation of the requesting Bidder's Bid. ITS will not provide Bidders with information about another Bidder's Bid. This is also an opportunity for a Bidder to learn how to improve future bids.

#### **1.44 ITS BID PROTEST POLICY**

The State of New York strives to assure a fair, open and competitive process to all vendors qualified to respond to this Procurement. In the event that any vendor has a complaint or objection to the RFP requirements, the procurement process or any matter affecting the submission of a vendor's Bid, the vendor is encouraged to informally contact the ITS Sole Designated Contact for this procurement, listed on the cover page of this RFP, immediately to resolve the matter.

If the vendor believes that the objection affects the outcome or nature of the proposed award for this Procurement, the vendor must follow the procedures for timely filing a formal protest set forth in Section 4 of the ITS Bid Protest Policy. Prior to Contract award, protests which may affect the outcome or nature of the award may only be considered by the State in the context of a formal written protest filed in accordance with the procedure located in Attachment T.

#### **1.45 STATE'S RESERVED RIGHTS**

ITS reserves the right to:

- a) Withdraw the RFP at any time, at the Agency's sole discretion;
- b) Modify the requirements of the RFP, eliminate requirements, whether material, mandatory or not, if deemed to be in the State's best interests, amend the RFP requirements to correct errors or oversights, supply additional requirements as it becomes available, and direct Bidders to submit bid modifications addressing such RFP amendments;
- c) Reject any and all bids received in response to the RFP;
- d) Change any of the scheduled dates;
- e) Make an award under the RFP in whole or in part;
- f) Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of the RFP;

- g) Seek clarifications and revisions of bids including correction of mathematical or other errors for the purpose of assuring a full and complete understanding of a Bidder's bid and/or to determine a Bidder's compliance with the requirements of the solicitation;
- h) Utilize any and all ideas submitted in the bids received, as permitted by law;
- i) Use all bid information obtained through site visits, management interviews and any clarifying material or information submitted by the Bidder to evaluate bids;
- j) Negotiate additional terms and conditions in any resulting Contract that are to the State's advantage, within the scope of the RFP;
- k) Conduct contract negotiations with the next responsible Bidder should the Agency be unsuccessful in negotiating with the first tentative awardee;
- l) Waive minor irregularities and/or omissions in Bids if in the best interest of the State;
- m) In its sole discretion, accept or reject illegible, incomplete, or vague bids; and
- n) Establish evaluation criteria, evaluate bids and award contracts on the basis of these criteria.

#### **1.46 BID LIABILITY AND LATE SUBMISSIONS**

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 of a Contract. Bids must be received by ITS on or before the date and time indicated in Section 6 RFP Calendar. LATE BIDS SHALL BE REJECTED. The received time of Bids will be determined by ITS by consulting the United States Official Time Clock at <http://time.gov/HTML5/>. NO CONSIDERATION WILL BE GIVEN TO BIDS RECEIVED AFTER THE STATED DATE AND TIME.

#### **1.47 BID VALIDITY**

Bids must remain open and valid for at least 180 days from the bid opening date, unless the time for awarding the Contract is extended by mutual consent of ITS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 180-day period until ITS makes a tentative award of the Contract or the Bidder withdraws the Bid in writing.

#### **1.48 BID RESULT NOTIFICATIONS**

Bidders will be notified, in writing, of their selection or non-selection.

#### **1.49 EXTRANEOUS TERMS AND CONDITIONS**

Bids must conform to the terms set forth in the Solicitation. Extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid. Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Each proposed extraneous term must be specifically enumerated in writing using the template provided as Attachment P, and specify the particular RFP section that Bidder proposes to modify the reasons why.

No extraneous term shall be incorporated into the Contract unless expressly accepted by ITS in writing. Acceptance and/or processing of a Bid shall not constitute acceptance of extraneous terms. Extraneous terms must meet all the following requirements to be considered as having been validly submitted as part of a Bid.

ITS will not entertain any exceptions to Appendix A - Standard Clauses for New York State Contracts.

Should ITS and a tentative awardee be unable to reach agreement as to the terms of the Contract within a reasonable time, as determined by ITS, ITS may withdraw the award, at its option, and proceed to the next highest bidder.

#### **1.50 ACCURACY OF BIDS**

Bidders are responsible for the accuracy of their bids. All Bidders are directed to take extreme care in developing their bids. Bidders are cautioned to review their bids carefully prior to bid submittal, as requests for bid withdrawals of any type are not likely to be granted. All exceptions and deviations must be noted in bids and no adjustments may be made after award is issued. If a Bidder submits its bid ahead of the submission deadline, it may submit an amended Bid any time prior to the Bid Submission Due Date indicated in Key Events/Dates.

#### **1.51 PRIME BIDDERS, SUB CONTRACTORS AND CONTRACTOR OBLIGATIONS**

Bidders may submit proposals that include subcontractors. Upon award, the Prime Bidder shall be the Contractor for this engagement. The Contractor is responsible for meeting all Contract obligations set forth in the solicitation and Contract, including all Appendices, Attachments, and any subsequent amendments mutually agreed to in writing between the parties. All subcontractors proposed by the Bidder must be identified in the proposal and must be acceptable to ITS. The Bidder as Prime Contractor remains the single point of contact for ITS. ITS will contract with only the Prime Contractor. Where applicable, in the specific subcontractor proposed to perform the Prime Contractor's obligation must be identified in the Bidder's proposal, but such identification does not relieve the Prime Contractor of any responsibility for performance under the contract with ITS.

ITS may require Contractor to execute contracts with all subcontractors identified in its proposal prior to Contract start of services, and may withhold or withdraw approval of the proposed award in the event that such agreements have not been entered into. If ITS so requires, Contractor shall furnish a written copy of all subcontracts, and subsequent amendments thereto, to the State and/or certify the completeness of all executed subcontracts or third-party agreements which support the Contractor's ability to furnish the products and services for this engagement, at ITS' option. Any waiver of Contractor's failure to furnish information as required in this paragraph shall not be deemed a waiver of any subsequent breach resulting from Contractor's failure to furnish information under this paragraph.

#### **1.52 STATE FINANCE LAW SECTION 139-I REQUIREMENT FOR CONTRACTS OF \$1,000,000 OR MORE**

It is the policy of ITS to promote the participation by New York state business enterprises and residents in procurement contracts estimated to be \$1,000,000 or more in compliance with State Finance Law § 139-i. After the Contract is awarded, for procurement contracts in the amount of \$1,000,000 or more, Contractor will be required to notify New York State business enterprises and residents of subcontracting and employment opportunities in compliance with New York State Finance Law Section 139-i. Contractor must document its efforts by showing that it has (i) solicited bids in a timely and adequate manner from New York State Business Enterprises including certified minority and women-owned businesses, (ii) contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises, (iii) placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or (iv) participated in Bidder outreach conferences. If the Contractor determines that New York State Business Enterprises are not available to participate on the contract as subcontractors or suppliers, the Contractor shall provide a statement indicating the method by which such determination was made. If the Contractor does not intend to use subcontractors, the Contractor shall provide a statement verifying such. Contractor shall also provide notification to New York state residents of employment opportunities through listing any such positions with the community services division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

Bidders located in a foreign country are notified that the State may assign or otherwise transfer offset credits created by any procurement contract of \$1,000,000 or more, directly or indirectly, to third parties located in New York State, and that Bidders shall be obligated to cooperate with the State in any and all respects in making such assignment or transfer, including, but not limited to, executing any and all documents deemed by the State to be necessary or desirable to effectuate such assignment or transfer, and using their best efforts to obtain the recognition and accession to such assignment or transfer by any applicable foreign government.

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

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the procuring agency and bidders during the procurement process. Bidders are restricted from making contact, from the earliest notice of intent to solicit offers/bids through final award and approval of the procurement contract by ITS 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). 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 Bidder shall be 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/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp).

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

Prior to being awarded a contract, the contractor must be registered in the New York State Vendor File (Vendor File) administered by the 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, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to Contractor for use on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York. For more information on the Vendor File please visit the following website: [http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

### **1.55 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINESS ENTITY**

The State conducts a review of prospective contractors ("Bidders") and Subcontractors with anticipated expenditures at \$100K or more 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, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

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

### **1.56 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](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.

### **1.57 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS**

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

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

Form A - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

Form B - Contractor's Annual Employment Report. Throughout the term of the Contract by May 15<sup>th</sup> of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1<sup>st</sup> through March 31<sup>st</sup> fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:

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

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

Contractor agrees to simultaneously report such information to CS and OSC as designated below:

<b>Department of Civil Service</b>	<b>Office of the State Comptroller - Bureau of Contracts</b>
Alfred E. Smith State Office Building	110 State St., 11 <sup>th</sup> Floor
Albany, NY 12239	Albany, New York
	Attn: Consultant Reporting

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

Further information is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at <http://osc.state.ny.us/agencies/guide/MyWebHelp/>

**INSTRUCTIONS FOR COMPLETING FORM A AND B:**

Form A and Form B should be completed for Contracts for consulting services in accordance with OSC's policy and the following:

**Form A** - Contractor's Planned Employment Form (available from and submitted to the using Agency, if necessary.)

**Form B** - Contractor's Annual Employment Report (to be completed by May 15th 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 CS, OSC and procuring Agency.)

**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 describes 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](http://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.