State of New York

NYS Office of Information Technology (ITS) Competitive Procurement for:

RFP C000382 ITS Service Desk Support and End User Break-Fix Support Services

REVISED 1/29/16

SOLE DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS	
Mr. Edward Snyder, CPA, MS (BΓΣ), **Contract Management Specialist** All questions regarding this RFP must be submitted via electronic mail to the designated contact for this RFP at its.sm.ITS_BIDS@its.ny.gov **Neither phone nor fax inquires will be accepted. Administrative issues pertaining to sending/receiving email through the designated mailbox may be reported at (518) 402-2725.**	
US Post Office mailings – US Post Office standard and US Post Office overnight	NYS OFFICE OF INFORMATION TECHNOLOGY SERVICES PROCURMENT AND CONTRACT SUPPORT UNIT Attention: Mr. Ed Snyder PO Box 2062, Albany, NY 12220
UPS and FedEx express delivery overnight and ground service	NYS OFFICE OF INFORMATION TECHNOLOGY SERVICES PROCURMENT AND CONTRACT SUPPORT UNIT Attention: Mr. Ed Snyder Empire State Plaza, Swan Street Building, Core 4 Albany, NY 12223
Hand Deliveries to front desk	NYS OFFICE OF INFORMATION TECHNOLOGY SERVICES PROCURMENT AND CONTRACT SUPPORT UNIT Attention: Mr. Ed Snyder Empire State Plaza, Swan Street Building, Core 4, 1st Floor Lobby Albany, NY 12223

Calendar of Events	
Event	**Date**
1. RFP Release Date	December 21, 2015
2. Deadline for Submission of Pre-Bid Conference Questions	January 5, 2016
3. Pre-Bid Conference Registration Deadline	January 6, 2016
4. Mandatory Pre-Bid Conference* Time: TBD Location: TBD, Albany, NY area	**January 8, 2016**
5. Deadline for filing Mandatory Notice of Intent to Bid:*	**January 15, 2016**
6. Deadline for Submission of Vendors' Questions	**January 15, 2016**
7. Issuance of Response to Submitted Questions	~~On or about January 22, 2016~~ On or about January 29, 2016
8. BID PROPOSALS DUE DATE	~~**February 1, 2016 at 4:00 PM EST**~~ **February 19, 2016 at 4:00 PM EST**
9. Vendor Presentations	~~On or about Week of February 29th - March 4th, 2016~~ On or about Week of March 21st – March 24th, 2016
10. Site Evaluations	~~On or about Week of March 7th -11th, 2016~~ On or about Week of March 28th – April 1st, 2016
11. Anticipated Notification of Award	~~On or about March 25th, 2016~~ On or about April 14, 2016
12. Debriefing Request Deadline	No later than 10 business days from date of award announcement
13. Bid Protest Deadline	See Appendix E – Bid Protest Policy
14. Timeframe for Contract Negotiations	10 business days from date of award announcement
15. Timeframe for Contract Approval; Contract to Begin	Approximately 90 days
16. Start-Up period, beginning upon contract approval (Refer to section 2.5)	90 days
17, Stabilization Period, beginning on 91st day after Contract Approval (Refer to section 2.6)	90 days
18. Steady State begins	181 days after Contract Approval

*Mandatory Requirements: Filing of a Notice of Intent to Bid and attendance at the Pre-Bid Conference are mandatory prerequisites to further participation in this Procurement. ITS reserves the right, in its sole discretion, to alter the information and schedule shown above. In such an event, ITS will publish the notification on its website at: https://its.ny.gov/competitive-procurement-opportunities.

ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP AND ALL QUESTIONS, COMMUNICATIONS AND SUBMISSIONS TO ITS MUST BE WRITTEN IN THE ENGLISH LANGUAGE WITH QUANTITIES EXPRESSED USING ARABIC NUMERALS. ALL PRICES SHALL BE EXPRESSED, AND ALL PAYMENTS SHALL BE MADE, IN UNITED STATES DOLLARS ($ USD). ANY PROPOSAL RECEIVED THAT DOES NOT MEET THE ABOVE CRITERIA MAY BE REJECTED AT THE SOLE OPTION OF ITS.

NOTICE OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING AND CONTACTS

State Finance Law §139-j(6) requires that a governmental entity incorporate a summary of its policy and prohibitions regarding permissible contacts during a covered procurement. Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal (RFP) includes and imposes certain restrictions on communications between the Office of Information Technology Services (ITS), a governmental entity and any vendor during the procurement process.

A vendor is restricted from making contacts from the earliest notice of intent to solicit offers including this Request for Proposal through final award and approval of the procurement contract by ITS and the Office of the State Comptroller ("Restricted Period") to other than the ITS staff member who has been designated by ITS as the sole procurement contact and who has been identified on the first page of this RFP. There are certain statutory exceptions set forth in State Finance Law §139-j(3)(a).

State Finance Law §139-k(4) obligates every governmental entity during the restricted period of a procurement contract to make a written record of any contacts made. The term "contact" is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the governmental procurement. The ITS Office of Counsel and Legal Services is required to make a determination of the responsibility of the vendor pursuant to State Finance Law §§139-j and 139-k. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four (4) year period, the vendor is debarred from obtaining governmental procurement contracts.

Additional information and guidance on the "Restricted Period" and permissible contacts can be found in the guidelines issued by the New York State Advisory Council on Procurement Lobbying, which can be found on the OGS website at: http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html

Vendors must provide ITS with a required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. The vendor must agree to the certification and complete the affirmation of such agreement included at Attachment 28 in Form 1: Bidder's Affirmation of Understanding of an Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6)(b) and Form 3: Bidder's Certification of Compliance with State Finance Law §139-k(5), which are mandatory submissions.

TABLE OF CONTENTS

SECTION 1 - OVERVIEW 7

1.1 PURPOSE OF REQUEST FOR PROPOSALS 7
1.2 AGENCY INTRODUCTION - THE OFFICE OF INFORMATION TECHNOLOGY SERVICES 7

1.2.1 Mission, Vision and Values Statement 7
1.2.2 IT Transformation 7

1.3 BRIEF DESCRIPTION OF CURRENT SERVICES 8
1.4 OVERVIEW OF DESIRED SERVICES 9

SECTION 2 - DETAILED CONTRACTOR REQUIREMENTS 10

2.1 LEVEL 1 IT SERVICE DESK SUPPORT 10

2.1.1 Applications and Supported Services 13
2.1.2 Incident Severity Levels 14

2.2 LEVEL 2 END USER BREAK-FIX SUPPORT 14

2.2.1 Service Site Requirements 16
2.2.2 End User Equipment – Requirements 17

2.3 BACKGROUND CHECK REQUIREMENTS 18
2.4 TRAINING REQUIREMENTS 18

2.4.1 NYS Mandated Training 18
2.4.2 Additional Training 18

2.5 START-UP PERIOD REQUIREMENTS 19
2.6 STABILIZATION PERIOD REQUIREMENTS 19
2.7 END USER SUPPORT RESPONSIBILITY 19

SECTION 3 - SERVICE LEVEL REQUIREMENTS, CREDITS FOR NON–PERFORMANCE, EARNBACKS AND REPORTING REQUIREMENTS 22

3.1 REPORTS 25

3.1.1 Service Desk Reporting 25
3.1.2 Performance Reporting 25
3.1.3 Status meetings 26

SECTION 4 - CONTRACTOR QUALIFICATIONS AND STAFFING 27

4.1 MANDATORY BIDDER ELIGIBILITY QUALIFICATIONS 27
4.2 KEY PERSONNEL 27
4.3 REMOVAL AND REPLACEMENT OF CONTRACTOR STAFF 28
4.4 PROFESSIONALISM 28

SECTION 5 - ADMINISTRATIVE REQUIREMENTS AND INFORMATION 28

5.1 INFORMATION TO BE COMMUNICATED IN WRITING OR BY E-MAIL 28
5.2 MANDATORY REQUIREMENT - PRE-BID CONFERENCE 28
5.3 MANDATORY REQUIREMENT – VENDOR MUST TIMELY FILE A NOTICE OF INTENT TO BID 29
5.4 SUBMISSION OF WRITTEN QUESTIONS 29
5.5 ISSUANCE OF OFFICIAL RESPONSES TO VENDORS' QUESTIONS 29
5.6 ITS RESERVES THE RIGHT TO MODIFY REQUIREMENTS 30

5.7 COSTS INCURRED PRIOR TO CONTRACT APPROVAL 30
5.8 MANDATORY REQUIREMENT - PRICE PROTECTION 30
5.9 PROCUREMENT RECORD 30
5.10 NOTIFICATION OF AWARD AND OPPORTUNITY FOR DEBRIEFING 30
5.11 ITS BID PROTEST POLICY 30
5.12 STATE'S RESERVED RIGHTS 31
5.13 CONTRACT TERM 32
5.14 TIME IS OF THE ESSENCE 32
5.15 CONTRACT FORMATION 33
5.16 REQUIREMENT - APPENDIX A STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS 33
5.17 REQUIREMENT - DISCRIMINATORY JURISDICTIONS 33
5.18 NEGOTIATIONS WITH THE NEXT HIGHEST BIDDER 33
5.19 PRIME CONTRACTOR 34
5.20 SUBCONTRACTORS 34
5.21 TRADE SECRET MATERIALS 35
5.22 REQUIREMENT FOR CONTRACTS ESTIMATED TO BE $1,000,000 OR MORE: 36
5.23 KEY EVENTS AND DATES 36
5.24 PROPOSAL LIABILITY AND LATE SUBMISSIONS 37
5.25 PROPOSAL VALIDITY 37
5.26 BID OPENING RESULTS 38
5.27 IMPORTANT BUILDING ACCESS PROCEDURES FOR VISITORS AND HAND DELIVERIES 38
5.28 EXTRANEOUS DOCUMENTATION 38
5.29 EXTRANEOUS TERMS AND CONDITIONS 38
5.30 ACCURACY OF BIDS 38
5.31 PROCESS FOR CHANGE REQUESTS 38

SECTION 6 - FORMAT, CONTENT AND DELIVERY OF BID PROPOSALS 39

6.1 DELIVERY OF PROPOSALS 39
6.2 PROPOSAL FORMAT AND CONTENT REQUIREMENTS 39
6.2.1 Package 1 - Technical Proposal 39
6.2.2 Package 2 – Financial/Administrative Proposal 44
6.3 MULTIPLE SUBMISSIONS 45

SECTION 7 - EVALUATION METHODOLOGY 45

7.1 OVERALL PROPOSAL EVALUATION PROCESS 45
7.2 COMPLETENESS REVIEW 46
7.3 TECHNICAL MANDATORY EVALUATION (PASS / FAIL) 46
7.4 FINANCIAL (COST) EVALUATION (30 POINTS) 46
7.5 TECHNICAL PREFERRED EVALUATION - WRITTEN PROPOSAL 46
7.6 SUBTOTAL OF COMBINED EVALUATION SCORE 46
7.7 TECHNICAL PREFERRED EVALUATION – ORAL VENDOR PRESENTATIONS 47
7.8 SUBTOTAL OF COMBINED EVALUATION SCORE 47
7.9 TECHNICAL PREFERRED EVALUATION - SITE EVALUATION 47
7.10 TOTAL OF COMBINED EVALUATION SCORE 47

SECTION 8 - TERMS AND CONDITIONS 48

8.1 CONTRACT TERM 48
8.2 MODIFICATION OF CONTRACT 48

8.3 EXECUTORY PROVISION/CONTRACT FORMATION 48
8.4 INTEGRATION, MERGER, AND ORDER OF PRECEDENCE 48
8.5 ITS RESPONSIBILITIES 49
8.6 CONTRACTOR RESPONSIBILITIES, QUALIFICATIONS, AND CHANGE IN STATUS 49
8.7 INDEPENDENT CONTRACTOR 50
8.8 CONTRACTOR PERSONNEL 50
8.9 EMPLOYMENT REPORTING REQUIREMENTS 50
8.10 SUBCONTRACTORS 50
8.11 COOPERATION WITH THIRD PARTIES 51
8.12 COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS 51
8.13 TASK ORDERS FOR EMERGENCY SITE SUPPORT 51
8.14 WORK OUTSIDE THE SCOPE OF THE CONTRACT 52
8.15 NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE 52
8.16 NOTICE 52
8.17 PRICING, BILLING, AND PAYMENT FOR SERVICES 52
8.18 ELECTRONIC PAYMENT REQUIREMENT 53
8.19 WARRANTIES AND GUARANTEES 53
8.20 INDEMNIFICATION AND LIMITATION OF LIABILITY 54
8.21 COMPLIANCE WITH LAWS 54
8.22 SUSPENSION OF WORK 56
8.23 TERMINATION 56
8.24 TRANSITION 57
8.25 CONTRACTOR RESPONSIBILITY IN THE EVENT OF AN EMERGENCY 58
8.26 FORCE MAJEURE 59
8.27 DISPUTE RESOLUTION 59
8.28 GENERAL PROVISION AS TO REMEDIES 59
8.29 ADDITIONAL REMEDIES 59
8.30 INSURANCE 59
8.30.1 Compliance with Workers' Compensation and Disability Coverage Requirements 60
8.31 TAXES 61
8.32 OUTSTANDING TAX LIABILITIES 62
8.33 SECURITY, NON-DISCLOSURE/CONFIDENTIALITY & PRESS RELEASES 62
8.34 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 64
8.35 ETHICS COMPLIANCE 66
8.36 MOST FAVORABLE TERMS 67
8.37 TRANSFER OF CONTRACT 67
8.38 WAIVER 67
8.39 ACCESSIBILITY 67
8.40 FEDERAL FUNDING 67
8.41 COMPLIANCE WITH NYS SECURITY POLICIES AND STANDARDS 67
8.42 SEVERABILITY 68
8.43 PIGGYBACKING 68
8.44 PROPOSED COST SAVINGS OPPORTUNITIES 68

APPENDICES **69**

Appendix A – Standard Clauses for New York State Contracts 69
Appendix B – ITS General Specifications 69
Appendix C – Example of Service Level Credits, Unrelieved Service Level Credits, and maximum At Risk Amount 69
Appendix D – Criminal Justice Information Services (CJIS) Security Policy 69
Appendix D2 – CJIS Security Requirements and Certification 69
Appendix E – ITS Bid Protest Policy 69
Appendix F – Glossary 69
Appendix G – Not used in this RFP 69
Appendix H – Role Description 69
Appendix I – Priority Sites 69
Appendix J – Site Inventory by County 69
Appendix K – Port Inventory 69
Appendix L – Opened Incident History 69
Appendix M – ITS Sites Served by Region 69
Appendix N – Change Order Form 69
Appendix O – Average Age of PCs 69
Appendix P - EEO 101, Workforce Employment Utilization/Diversity Compliance Report 69
Appendix Q - MWBE 102, Quarterly MWBE Compliance Report 69
Appendix R – Example Alert Monitoring Notes 69
Appendix S – High Level Process Overview 69
Appendix T – Estimated Volumes 69
Appendix U – Current ITS ServiceNow Implementation 69
Appendix V – Supported Agencies and Staff Count 69
Appendix W – Deliverable Acceptance Form 69
Appendix X – Milestone Deliverables 69

ATTACHMENTS **69**

Attachment 1 - Proposal Checklist 69
Attachment 1A – Intent to Bid 69
Attachment 1B - Pre-Bid Conference Registration Form 69
Attachment 2- Inquiries Template 70
Attachment 3 - Vendor Responsibility Questionnaire 70
Attachment 4 - NYS Required Certification 70
Attachment 5 - Encouraging Use of NYS Business in Contract Performance 70
Attachment 6 - Contractor Certification to Covered Agency ST-220-CA 70
Attachment 7 - Bidder Firm Information Form 70
Attachment 8 - Financial Proposal 70
Attachment 9 - Equal Employment Opportunity Staffing Plan – EEO 100 70
Attachment 10 – Minority/Women Owned Business Utilization Plan – MWBE-100 70
Attachment 11 – Workers' Compensation and Disability Insurance Requirements 70
Attachment 12 – Consultant Confidentiality and Non-Disclosure Agreement 70
Attachment 13 – Firm Offer Letter and Conflict of Interest Disclosure 70
Attachment 14 – Not Used in this RFP 70
Attachment 15 - Lobbying Forms 70
Attachment 16 – Not Used in this RFP 70

Attachment 17 – Mandatory Bidder's Eligibility Qualifications Form 70
Attachment 18 –Technical Proposal 70
Attachment 19 – Requirements Verification and Traceability Matrix..... 70
Attachment 20 – Extraneous Terms Template 70
Attachment 21- Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement (Form # 4)..... 70

LIST OF TABLES

Table 1 - Incident Severity Levels..... 14
Table 2 – End User Support Responsibility Matrix..... 20
Table 3 – Service Level Requirements 23

SECTION 1 - OVERVIEW

1.1 PURPOSE OF REQUEST FOR PROPOSALS

The New York State Office of Information Technology Services (ITS) seeks to consolidate and improve its information technology (IT) service delivery to state agencies, county governments and citizens. ITS is issuing this Request for Proposals (RFP) to seek Proposals from responsive and responsible Contractors for managed services for service desk and End User Support Services to significantly improve the quality and timeliness of these Services to all New York State ("State" or "NYS") customers of ITS. The selected Bidder will manage and deliver these Services and resources using industry best practices.

The business goals for this procurement include but are not limited to:

- Improve ITS's efficiency and effectiveness in the areas of customer reporting, logging, tracking, resolving of IT Incidents, and Service Requests.
- Improve efficiency and effectiveness by early identification of significant Incidents, by linking multiple related reports and taking proper action.
- Improve ITS's efficiency and effectiveness in the areas of End User Break-Fix support, inventory tracking and Asset Management in support of Break-Fix.
- Acquire skilled service desk and End User Break-Fix support staff for new technologies early in their life cycle, while maintaining support for older technologies.

1.2 AGENCY INTRODUCTION - THE OFFICE OF INFORMATION TECHNOLOGY SERVICES

1.2.1 Mission, Vision and Values Statement

MISSION	To create and deliver innovative solutions that foster a technology enabled government to best serve New Yorkers
VISION	To lead the nation in serving citizens, businesses and visitors through world-class technology
VALUES	Accountability, Citizens, Innovation, Integrity, People, Transformation

1.2.2 IT Transformation

In the fall 2012, ITS was created to consolidate information technology (IT) service delivery to 52+ New York State agencies (see Appendix V), creating a single Agency to handle the delivery of the full range of IT services to our partner agencies in the largest IT consolidation in State government history. ITS has a workforce of approximately 4,000 IT professionals, serving over 120,000 End Users. Historically, IT systems and applications were primarily decentralized with solutions developed and deployed within individual State agencies for specific programs or regions with agencies supported by discrete teams of IT leadership, technologists, and support staff working with disparate IT tools and methods, delivering varied technical platforms.

ITS has launched a new IT organization and is transforming IT across the State to offer world-class service that provides a consistent and high-quality experience for our End Users and citizens. With this landmark IT Transformation initiative, the State plans to achieve enhanced IT capabilities to improve government services and enable it to build an IT environment that:

- ✓ Maximizes existing resources

- ✓ Meets Agency business needs with world class-customer service
- ✓ Creates a talented, innovative IT workforce
- ✓ Increases accountability
- ✓ Provides cost savings for the State

As part of the State's IT Transformation process, IT customer agencies are grouped into one of multiple Clusters. A Cluster is a grouping of agencies that have similar challenges, customers, data, business processes, and common IT needs. The service desk model and structure follows the ITS desire to consolidate core functions across the Enterprise – a single email and collaboration system in Office365, the consolidation of multiple data centers, a uniform VOIP voice network, and consolidated cellphone service.

1.3 BRIEF DESCRIPTION OF CURRENT SERVICES

Prior to the creation of ITS, 52 separate helpdesks of varying capabilities and performance outcomes existed. There were no standards in terms of business process and tools. Over the past 18 months, ITS has embarked on service desk consolidation to combine staff and standardize processes, to improve the End User and citizen experience. ITS now has nine Cluster based service desks with a goal of each service desk following standard Information Technology Infrastructure Library (ITIL) processes, utilizing a single instance of ServiceNow, for managing Incidents, Problems and Service Requests. Refer to Appendix U for a list of ServiceNow Incident Management System modules.

Level 1 IT Service Desk

The current Incident Management Process is invoked though several methods of intake. End Users can call the service desk using multiple telephone numbers per Agency, which connects them to the nine Cluster based service desks. New York State Citizens can also call the service desk for reset of an NY.GOV password only. Two service desks have implemented ServiceNow's chat functionality with plans to expand to all Cluster service desks. All End Users have the ability to enter self-service tickets or send an email directly to request help, which are then routed to the correct Cluster service desk based on the user's profile.

All service desks employ the use of an integrated knowledge management process as part of ServiceNow. Updates to knowledge occur whenever changes are made to applications or infrastructure. Updates also occur from the problem management process (root cause analysis).

Before award of the contract ITS will enable remote support to all End Users' devices across the Enterprise using standard tools like SCCM, VDI, and RDP. Additionally, service desks also use other tools for enterprise management of endpoint devices, including SCCM for desktops, and MDM for mobile devices.

Level 2 End User Break-Fix Support

An End User will contact one of the nine service desks and if needed, an Incident will be dispatched to a regional support team. ITS uses a regional geographical support model to provide services to support End Users throughout NYS. These regional support teams, spread across different parts of NYS, are organized into four virtual teams located across NYS. The regional support teams provide End User desktop support (i.e.; pc support, printer support, software image support, video conferencing support etc.). Refer to Appendix M for an overview of sites by region.

ITS is in the process of rolling out SCCM to manage all of the supported end point devices, roughly half of the population is managed currently, and the overall project is expected to be completed by April 2016. ITS has begun to offer VDI to reduce maintenance costs, 2,500 End Users are currently utilizing VDI and ITS expects this number to grow to 40,000 within the next 24 months.

ITS uses a centralized Asset Management process to control and track inventory. End Users requesting devices will enter a request in ServiceNow and the fulfillment process would be managed via the service desk and End User Support teams. All assets are tracked in ServiceNow, received centrally, and dispatched to regional locations as appropriate. An aggregate listing of currently supported End User hardware and manufacturers is available at: http://www.ogs.ny.gov/purchase/pcpurchase.htm. The vendor

should review Appendix O to identify the average age of personal computers. During the life of the contract, ITS expects there will be annual refresh of 25% of the physical hardware inventory. Additionally, during calendar year 2017 ITS intends to refresh any physical equipment with an age of 6 years or older. The Contractor is only responsible for Break-Fix of existing inventory, and is not responsible for new hardware installation or refresh.

ITS does not warranty that the information and data provided in the RFP is entirely accurate, and therefore it is subject to change. The Estimated Volume data in Appendix T is an estimate or a representative sampling based on the data available on the date and time of collection.

1.4 OVERVIEW OF DESIRED SERVICES

This section provides an overview of the desired IT Services to be provided by the Contractor. Detailed Contractor requirements are specified in Sections 2, 3 and 4 of this RFP. See Appendix T for volume details.

The Contractor will be the initial point of contact, escalate and manage Issues for End Users and citizens and will provide and deliver Services 24x7x365 days per year. The Contractor will provide service desk support in the English language primarily, and translation services for the top 6 non-English speakers languages subject to Executive Order 26 (See Appendix T for volume and language details). Contractor's scope of services will include:

1. Level 1 IT Service Desk
2. Level 2 End User Break-Fix

Level 1 IT Service Desk

The objective of the service desk is to provide the Services outlined herein. End Users will be able to communicate with the service desk by telephone, online chat, email, or through a submission in the on-line support portal. All initial IT service desk calls will be directed to the Contractor to log the information provided in ServiceNow, resolve and close Incidents that are First Contact Resolvable, and escalate Incidents that are not First Contact Resolvable. Calls resulting in an Incident will be routed via a predetermined escalation process to the resolver groups best suited to handle the call. Standard operating procedures will also be developed and implemented during the Start-Up Period (refer to Section 2.5 for an explanation).

Level 2 End User Break-Fix Support

The Contractor will receive dispatch requests for repair from designated sources, primarily the service desk. Authorized sources for dispatch requests will be specified in the Contract resulting from this award and will be updated as required during the term of the Contract. The Contractor must serve as a resolver described in the End User Support Responsibilities section below, interacting directly with the requestor or their designee.

- The Contractor must provide on-site support for End User Break-Fix services to address Incidents pertaining to any End User device including but not limited to PCs, laptops, tablets, phones, and printers.
- In order to maintain a consistent level of service to End Users, it is expected that the Contractor will perform equipment swaps for warranty and out-of-warranty equipment using NY State provided spares as needed. ITS will follow up with warranty repair or replacement once the equipment has been returned to ITS.
- The Contractor must maintain adequate inventory of ITS provided replacement equipment to meet the SLR's.

Hourly Charged On-site End User Support

- The Contractor must be able to provide on-demand hourly charged on-site support for Emergency situations throughout the state. These Services will only be utilized when the

response to the situation warrants an on-site operational response greater than the scope of the RFP. The cost for these Services will be paid on a time and material basis.

See Appendix T for Volume Estimates of the number of government employees, citizen password resets, Service Requests, Incidents, Intake, Transaction Handling and other volume estimates pertinent to this RFP.

SECTION 2 - DETAILED CONTRACTOR REQUIREMENTS

2.1 LEVEL 1 IT SERVICE DESK SUPPORT

The primary function of the Level 1 IT service desk is to serve as the entry point, or Single Point of Contact (SPOC), for Incidents and Service Requests experienced by End Users and citizens.

Key Service Elements will include:

General

1. Contractor will, and will cause any Subcontractors to, perform all Services in compliance with the then-current version of the Information Technology Infrastructure Library ("ITIL").
2. Contractor will ensure that it is assessed as compliant with ITIL as of the Contract Start Date and will maintain such level of compliance throughout the Term.
3. Upon ITS request, Contractor will provide ITS with evidence of compliance ~~a copy of Contractor's then-current certificate of compliance~~ with such ITIL Standards.
4. Single Point of Contact (SPOC) for service desk support calls for IT-related Issues
5. Access via a no-fee telephone access (1-800 or an internal 518 number if calls originate from an on premise State telephone system). The Contractor must provide a SPOC call-in access telephone number dedicated to this contract for all service desk Services described in this RFP for all the ITS customer sites.
6. Service desk coverage provided 24x7x365 days per year
7. Record callers' information into the Service Management System, document the details of the Incident and Service Requests (i.e.; need a new phone, move from desk A to B, new employee onboarding etc.,) in ticket accurately, document the diagnostic steps performed when troubleshooting the Issue, and assist the user with resolution using existing procedures and documentation.
8. For all Incidents resolved by the Contractor, Contractor must document the resolution steps and close the incident (via ServiceNow) in less than 10 minutes following Incident Resolution, for Level 1 and Level 2 Break-Fix incidents.
9. The Contractor must record and redirect out-of-scope Incidents and Service Requests to ITS support group. See Table 2 – End User Support Responsibility Matrix.

Phone System

10. The Contractor must select and implement voice communications (e.g. IVR, ACD) software and hardware needed to collect the necessary information in order to document the Service Requests and Incidents received by the service desk.
11. Automatic call-back system

Incident Management

12. Assign severity levels to Incident based on the definitions provided by ITS. Examples of severity levels of Incidents are shown in Table 1. ITS reserves the right to mandate the severity level assigned to any given Incident.

13. Provide initial incident determination and Level 1 support incident resolution for End User devices including desktop, laptop, mobile, phones and video conferencing devices, business applications identified by ITS, third-party applications (COTS products such as Microsoft Office Suite, Cisco collaboration tools, Adobe etc.,) and provide basic support for network connectivity including wireless where available as directed by ITS knowledge articles. See Appendix L for details about historical incidents.
14. The Contractor must resolve Incidents using remote-control capability for troubleshooting and incident resolution purposes, when possible, implement corrective actions to resolve Incidents including implement patches for known errors. If Resolution is not possible, escalate per the escalation procedures.
15. Route incidents that are not First Contact Resolvable to the Contractor's End User Break-Fix support staff or NYS ITS staff, depending on the nature of the Incident or Service Request. See Appendix S.
16. Prior to handing off out-of-scope Incidents and Service Requests to the ITS support group, the Contractor must verify workstation connectivity to application or service.
17. Record any updates or modifications on Incidents and Service Requests until it is closed.

VIP

18. The Contractor must provide a VIP support process. All interactions with Employees designated as VIPs in ServiceNow shall be directed to senior call handlers and reviewed by ITS Service Desk Management.

Alert Monitoring

19. On a 24x7x365 basis monitor pre-defined dashboards, provided via 6 individual monitoring systems for the purpose of initiating incidents to NYS resolver groups for proactive systems management. The monitoring systems will capture critical health indicators of NYS IT Infrastructure components including network, servers, storage, and telecommunication.
20. Appendix R is a sample guide of one of ITS' monitoring procedures currently in use.
21. The Contractor will access NY State owned monitoring systems using virtual desktop connections and tools provided by NYS.
22. The current alert monitoring tools include: Prime, OpenNMS, Zenoss, email, IBM Tivoli Omnibus Console and Microsoft SCOM console. The list of monitoring tools are subject to modification during the entire length of the Contract.
23. The Contractor must ensure the quality of alert incident reporting by minimizing instances of incorrect Alerts (for example, alert incidents assigned to the wrong Assignment Group and/or on the wrong categorization, and scheduled outages).

Knowledge Base

24. Collaborate with NYS ITS to promote and enrich the Knowledge Base and the procedures required to manage the service desk

Password Reset

25. Password Resets for End Users
26. NY.GOV.ID Password Resets for citizens

Mobile Device Support

27. Level 1 support for both iPhone and Android devices
28. Mobile devices will be supported in the following manner:

    A. Mobile device connection to the Mobile Device Management software and the NYS Appstore

B. Connectivity to email and other collaboration tools from mobile devices
C. "How-to" documentation / knowledgebase articles for native email, calendar, O365, Cisco collaboration suite, virtual desktop and other applications
D. Remote device password reset and device disablement for lost / stolen devices

Quality Control

29. Customer Satisfaction Survey/Report - Currently, ITS conducts periodic Customer Satisfaction surveys to find out how customers rate Services and support provided; ascertain factors that contribute to Customer Satisfaction or dissatisfaction; and to give customers a voice to influence IT Services priorities and potential initiatives. ITS and the Contractor will review survey results and the Contractor must identify process improvements based on survey results.
30. The Contractor must provide ITS staff the ability to remotely monitor Contractor Service Desk agent calls (sometimes referred to as "service observe") for quality assurance audit purposes.

Service Level Metrics

31. The Contractor must track/manage/report service levels against the SLR attainment metrics.
32. The Contractor should provide suggestion on how levels of service can be improved.

Translation Services

33. In compliance with Executive Order 26 and State policy to provide language access to public services and programs, the Contractor will provide translation services for the top 6 non-English speakers languages. During the past year ITS provided translation services for Chinese, Creole, Italian, Korean, Russian and Spanish languages for a total of 37 calls / 385 minutes.

<u>Key Administrative Requirements</u>

General

34. The Contractor must provide and maintain recommended Service Desk Operations and Administration procedures for review and approval by ITS.
35. The Contractor must provide and maintain Service Desk Remote Device and Software Management procedures in the Standards and Procedures Manual for review and approval by ITS.
36. The Contractor must record, categorize, prioritize and log all Issues in ServiceNow.
37. The Contractor must answer calls using the ITS approved scripts.
38. The Contractor must host this service at the Contractor's location within the continental US.
39. All contract Milestone Deliverables must be submitted and accepted on the Deliverable Acceptance Form (Attachment W).

Staff Skills

40. The Contractor must also provide Service Desk Management.
41. The Contractor must answer service desk calls/email messages/chat professionally and courteously in a timely manner, consistent with SLR attainment metrics.
42. The Contractor must establish training programs to orient Contractor staff on ITS mission, vision and values.
43. The Contractor must provide appropriately skilled staff to meet the service level requirements specified in this RFP.
44. The Contractor must provide expert assistance for inquiries about the features, functions, and usage of hardware and software.

Tools

45. The Contractor will use ServiceNow to document users' Issues; monitor work queues; open, update and close tickets. The Contractor Service Desk staff will use ServiceNow licenses provided by ITS,
46. Before award of the contract ITS will enable remote support to all End Users' devices across the Enterprise using standard tools like SCCM, VDI, and RDP. Additionally, service desks also use other tools for enterprise management of endpoint devices, including SCCM for desktops, and MDM for mobile devices.

Communication

47. Communicate with users any ITS-scheduled downtimes, existing problems, or other types of Issues where users should be notified using ServiceNow, or the Contractor's IVR. The Contractor is also responsible for updating the IVR with information about any major outage, as directed by ITS.

Escalation Protocol

48. The Contractor must establish a detailed protocol for identifying concerns related to the delivery of Services. This protocol should include designated contacts, resolution intervals, and levels of management to be utilized to correct and resolve such matters.
49. The Contractor must maintain and provide escalation contact list(s) for all of the Contractor Service Areas (including Third Parties such as vendors and service providers).

Key Performance & Service Improvement Requirements

50. The Contractor must maintain a continuous improvement program that improves services.
51. The Contractor must identify solutions that minimize the need to call the service desk (e.g., additional End User training, Self-Help Support opportunities).
52. The Contractor must document solutions to Resolved Incidents and provide feedback for continuous improvement of the knowledge articles.

2.1.1 Applications and Supported Services

53. Contractor will log, diagnose, resolve, and refer Issues to appropriate ITS resolver groups when required. In cases where the call is not First Contact Resolvable, second, and third level ITS Support specialists will address and resolve the Incident.
54. Contractor shall be required to provide Level 1 support to all applications, software and processes utilized by End Users and citizens. Support includes all upgrades, enhancements, new versions and replacement applications for each of the ITS supported applications.

2.1.2 Incident Severity Levels

Table 1 - Incident Severity Levels

Severity Level	Title	Description
1	Urgent *Critical Business Impact*	The Incident has caused a complete and immediate work stoppage affecting a core Enterprise service or critical application as defined by the Cluster and referenced in the knowledge articles Examples: • Major application problem with Severity 1 applications (e.g., impacting public safety and health, or state revenue) • Severe disruption during critical periods (e.g., month-end processing) • WAN outage • Security violation (e.g., denial of service, port scanning)
2	High *Major Business Impact*	A business process is affected in such a way that business functions are severely degraded, multiple users are impacted, a key customer is affected, or a critical function is operating at significantly reduced capacity or with significantly reduced functionality. A work-around may be available, but is not easily sustainable. Examples: • Major data/database or application Issue (e.g., Microsoft Exchange) • Email system is performing slowly, but workload is manageable • Security incursion of a noncritical system • Requests received from VIP accounts.
3	Medium *Moderate Business Impact*	A business process is affected in such a way that certain functions are unavailable to End Users or a system and/or service is degraded. A work-around may be available. Examples: • Telecommunication Issue (e.g., with BlackBerry) • End User Device Issue (e.g., hardware, software)
4	Low *Minimal Business Impact*	An Incident that has little impact on normal business processes and can be handled on a scheduled basis. A work-around is available, or there is minimal negative impact on a user's ability to perform normal daily work. Examples: • "How-to" questions • Peripheral Issues (e.g., with a locally attached printer)

2.2 LEVEL 2 END USER BREAK-FIX SUPPORT

The primary function of Level 2 End User Break-Fix Support is to provide on-site Break-Fix support for End User equipment. The Contractor will respond to an Incident and dispatch technicians to repair or replace the defective equipment according to ITS approved procedures and guidelines.

Key Service Elements include, but are not limited to, the following:

General

1. Meet the Service Site requirements for Break-Fix support as detailed in Section 2.2.1
2. Support printers in a network environment, including Plotters, MFD and MFP equipment.

   For printer issues after proper triaging:

   For printers still on warranty, either OEM or third party, as designated in asset inventory in ServiceNow, the vendor's L1 Service Desk will follow procedures within the ITSM Knowledgebase to create a dispatch request through the corresponding vendor's dispatch process, typically web-based. The L1 Service Desk will then be responsible for creating an Incident within ServiceNow, with a reference to the manufacturer Incident number, and refer to ITS's L2 assignment group for follow up and closure.

   Or If the printer is not on warranty refer to ITS's L2 assignment group to resolve.

3. Level 1 support of Specialty Applications and associated hardware used by End Users.

Activity

4. Assist End Users with technical support of desktop computers, applications, peripherals, and related technology.
5. Document the details of the End User Issue accurately, document the diagnostic steps performed when troubleshooting any Incident, and assist the user with resolution using existing procedures and documentation.
6. Use ServiceNow to document users' Issues; monitor work queues; and open, update, and close tickets.
7. Verify the End User is logged in using their Active Directory (AD) credential and their device images are appropriately installed using the imaging software via Microsoft SCCM.
8. Verify workstation connectivity to application and obtain End User acceptance and sign off that confirms the custody of the new equipment and that the user is fully operational.

Asset Management

9. Maintain an End User equipment inventory in the Asset Tracking System that is part of ServiceNow.
10. Maintain and safeguard End User equipment per the requirements specified in section 2.2.2
11. Verify that all records (e.g., inventory, asset and configuration management records) are updated to reflect resolution of Incidents /fulfilled Service Requests.

Key Administrative Requirements

12. The Contractor must establish a detailed protocol for identifying concerns related to the delivery of Services. This protocol should include designated contacts, resolution intervals, and levels of management to be utilized to correct and resolve such matters.
13. It is expected that all the Incidents that are directed to the Contractor End User Break-Fix Support staff for dispatch will be managed through ServiceNow.
14. For occasions where voice communications are required, the Contractor must provide ITS with a phone number for use 24x7x365 to access the Contractor's maintenance organization for dispatch, clarifications, and status updates. Assigned Contractor Staff must carry cellular (mobile) phones, at Contractor's expense.
15. The Contractor must interact directly with the End User or their designee to provide documentation, status updates, and resolutions.

2.2.1 Service Site Requirements

The Services required have different service requirements, based on the type of site supported.

Standard Site Support

16. Coverage is required for on-site installation and repair services by a trained Break-Fix Technician, Monday through Friday, 7:00 AM to 5:00 PM ET (NYS Business Hours), excluding NYS holidays. A list of NYS Holidays can be found at http://www.cs.ny.gov/attendance_leave/2015_legal_holidays.cfm.
17. The Contractor may be requested for dispatch during off hours. The Contractor must provide an off-hours contact number to be utilized in emergency situations outside of NYS Business Hours.
18. Contractor staff member must respond to the Incident contact person by phone or email within 4 hours of receipt of the Incident to acknowledge receipt and convey the expected technician arrival time.
19. The Break-Fix Technician must be onsite for Incident that require dispatch by the next business day for locations within a 50-mile radius of a major city limit. (Major NYS cities are: Albany, Syracuse, Rochester, Buffalo, NYC, and Long Island.)
20. For other locations, the dispatched Break-Fix Technician must be onsite within 2 business days of the dispatch request.
21. The response/repair time requirements for Break-Fix Services are intended to ensure optimal productivity from installed equipment by minimizing downtime. This is an especially critical factor in locations where back-up equipment is not readily available.

Priority Site Support

22. Priority sites must be supported 24 x 7. Priority sites are listed in Appendix I.
23. Within such hours of service availability, the Contractor must be on-site and must complete the necessary repairs within four (4) clock hours from receipt of a call from the service desk requesting Break-Fix Services.

ITS reserves the right to add or remove sites from the priority off-hours list, with 30 calendar days' advance notice to the Contractor. The total of priority sites will not increase by more than five over the life of the contract unless agreed by the Contractor.

Secure Site Support

There are strict guidelines for anyone entering a Secure Facility. No cell phones, air cards, or "contraband" will be allowed. Staff are only allowed to bring in an ITS-issued laptop if pre-approved. The Contractor will be provided with a list of secure sites and any additional applicable security requirements. These sites may take additional time to get into and out of.

24. The Contractor will be required to support Secure Sites on a 24x7 basis.
25. The Contractor must provide a list of all tools being brought into a Secure Facility.

Emergency Support

26. Contractor must provide Emergency On-site Support Services 24x7 for the duration of a declared emergency at any ITS designated emergency operations centers, including providing End User equipment provisioning/configuration and tracking, End User Support, on-site maintenance, repair and troubleshooting services.
27. ITS will provide Contractor twelve (12) hour advance notification, when possible. However, some disasters and emergencies may require immediate dispatch of Contractor staff. Shifts are typically 8 AM to 8 PM and 8 PM to 8 AM during the emergency.
28. Contractor staff must utilize the ServiceNow system for progress entries, transfers, and ticket closure operations.

2.2.2 End User Equipment – Requirements

Equipment Storage

29. The Contractor shall be required to store and install equipment purchased, and pre-configured by ITS, as necessary during the term of the Contract.
30. The Contractor must maintain adequate inventory by region to meet the SLR's. Prior to commencement of Services, Contractor is required to implement adequate replenishment re-order points, controls and procedures that will provide adequate lead time for ITS to procure, image and deliver equipment and any ITS and/or State chain-of-custody requirements.
31. The Contractor must take commercially reasonable measures to safeguard all New York state property from loss, destruction, or other damage before it is delivered into the possession of ITS, and will be liable to ITS for the loss, destruction, or damage of any equipment that is attributable to Contractor or its staff or subcontractors.
32. Contractor, at its sole expense, must safeguard each piece of equipment delivered to the Contractor and shall bear the risk of loss thereof until the item has been completely installed by the Contractor and accepted by the NYS End User in writing. Upon acceptance, the risk of loss shall pass to New York State.

Subject to any applicable limitations set forth in Appendix A, The State reserves the right to audit and/or review its assets provided to the Contractor to assess the quantity, condition, etc. of those assets. Contractor will be informed within a reasonable period of time in advance of such audits. However, the State reserves the right, in its sole discretion, to conduct unscheduled, on-site visits if it is deemed to be in the best interests of the State.

Removal of Old Equipment

33. Contractor shall be solely responsible and liable for the safety and security of any ITS equipment removed from a site and for any data contained therein, at Contractor's cost and expense until such equipment is returned to ITS in accordance with ITS instructions.
34. The Contractor must take commercially reasonable measures to safeguard all New York state property from loss, destruction, or other damage before it is delivered into the possession of ITS, and will be liable to ITS for the loss, destruction, or damage of any Equipment that is attributable to Contractor or its staff or subcontractors. Prior to commencement of Services, ITS will provide Contractor with any applicable additional processes and procedures for the pickup, handoff, and delivery of Equipment and any ITS and/or State chain-of-custody requirements.

Equipment/Asset Inventory Requirements

35. The Contractor staff must maintain the End User equipment asset inventory in ServiceNow for any Break-Fix replacements and returns.
36. In addition, the Contractor must provide supporting documentation, (e.g. ServiceNow) for Break-Fix Services that includes the following information:

- Incident Number
- Date and Time
- Site ID
- Site Name
- Agency Location Code (if applicable)
- Site Address
- Organization/Agency Name
- Equipment Type (e.g., Desktop, Printer)

- Equipment Model
- Equipment ID
- Serial Number
- IP Address
- Asset Tag Number (if applicable)
- Program Number
- Cost (if applicable)
- PO # (if applicable)
- Status
- User name (if applicable)

2.3 BACKGROUND CHECK REQUIREMENTS

37. Contractor must ensure that all staff that perform services under this Contract 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 placement at ITS. Any costs associated with the background checks, including related travel, will be borne by Contractor.

2.4 TRAINING REQUIREMENTS

2.4.1 NYS Mandated Training

38. Contractor staff that provide services under the Contract must complete annual NYS mandated training courses. All mandated courses are available online from the Statewide Learning Management System (SLMS) using a web browser interface. The courses that are currently required will take approximately eight (8) hours, in total, to complete and include:

- Right to Know
- Privacy and Security of Health Information
- Internal Controls
- Cyber Security Information and Security Awareness (separate or combined training will include content regarding compliance with the requirements of CJIS)
- Equal Employment Opportunity: Rights and Responsibilities
- Sexual Harassment in the Workplace
- Prevention of Violence in the Workplace
- Code of Conduct

There is no charge to the Contractor for NYS-provided training, although the staff hours to attend the training is the responsibility of the Contractor. The content and quantity of mandated training courses may change over the course of this contract and will be communicated by ITS to the Contractor.

2.4.2 Additional Training

39. The Contractor will be required to provide its staff with training required to maintain and update proficiency with new technologies and applications throughout the contract term at the Contractor's expense.

2.5 START-UP PERIOD REQUIREMENTS

The Start-up Period shall be 90 days following the approval by the State Comptroller. During the Start-up Period, the Contractor must:

40. Present a detailed 90 day Start-Up plan, within the first seven (7) days of the Start-up period that supports the smooth and non-disruptive transition of L1 service desk and L2 Break-Fix services from ITS to the Contractor
41. Establish and finalize operational procedures and guidelines, in working closely with ITS. Examples of items to be addressed include establishing call priority levels, call categories, appropriate points of contact for all second and third level support for calls outside of Contractors responsibility, establish VIP caller list and escalation procedures
42. Develop a consolidated business calendar that provides a window of events during a calendar year that would generate more than normal call volumes. This may include events such as tax filing season, budget season, relocation of staff etc.,
43. Process for the Contractor to be notified through the ITIL Change Management process of infrastructure updates/changes, introduction of new software or tools that may impact the call volumes
44. Review and suggest updates to initial Knowledge Base articles for all standard COTS tools, customized and proprietary based business applications for level 1 service desk support requirements
45. Develop and gain approval on reporting formats, data sources and transmission channels to meet the requirements outlined in section 3.1.1
46. Review, refine and finalize the Start-Up Plan**.** Bidders must propose their initial Start-up plan and schedule as described in Section 6.2.1.3 of this RFP.
47. Train and acquaint the Contractor service professionals with the tools and systems and transition from the current service model to the new Contractor provided services including both knowledge transfer and reverse knowledge transfer.
48. Request and validate required system access and authorization to perform the Contractor proposed services
49. Validate and finalize baseline for call volumes, document technical environments supported, supported business applications etc.
50. At the end of the Start-Up Period the Contractor is expected to be fully functional on the 91st day following the approval by the State Comptroller and begin capturing the performance metrics listed in Section 3.
51. Reserved

2.6 STABILIZATION PERIOD REQUIREMENTS

The Stabilization period shall commence on the 91st day and end on the 180th day following the approval by the State Comptroller. During the Stabilization period, the Contractor must:

52. Be fully operational and follow the operational procedures and guidelines established during the Start-Up period
53. Collect and report on the performance metrics and SLR's and provide Service Level Compliance information on the Service Level Requirements listed in Section 3. The format and other details will be agreed upon during the Start-Up period.
54. Provide service fully compliant with ITIL level 3.

2.7 END USER SUPPORT RESPONSIBILITY

The list below represents some areas that are critical for the initial and ongoing success for the delivery of End User support services. ***This list is not intended to be an all-inclusive list and Contractor must***

ensure all Contractors responsibilities are identified during the Start-Up period, which will last 90 days starting on the approval of the contract by the State Comptroller.

See High Level Process Overview, Appendix S.

Table 2 – End User Support Responsibility Matrix

Requirement	Responsibility		
	Contractor (Level 1)	Contractor Break-Fix (level 2)**	ITS
Provide ITS with a single point of contact for all IT technology Incidents and Service Requests, regardless of intake method (Phone, chat, email, self-service, etc.)	X		
Provide IVR ACD phone system	X		
Provide IT Service Management Software (ServiceNow)			X
Accurately log Incident in Incident Management System, categorize, and assign severity	X		
Manage and provide Level 1 support at initial point of contact for users	X		
Manage Incidents and support Service Requests using ServiceNow	X		
Meet all SLRs	X		
Provide Password Resets for End Users, and NY.GOV.ID Password Resets for citizens	X		
Provide Password Resets and device wipes for mobile devices	X		
Provide answers to "How-to" Questions (MS Office, Knowledge Base Tips, etc.)	X		
Manage and provide Level 1 support for Alert Monitoring	X		
Provide on-site End User Support for Break-Fix Services to address Incidents pertaining to any End User device including but not limited to PCs, laptops, tablets, phones, and printers		X	
Maintain the End User equipment asset inventory in ServiceNow for any Break-Fix replacements and returns		X	
Provide Asset Management Software (ServiceNow)			X
Manage and provide training for End Users			X
Manage and provide new user equipment setup and configuration			X
Manage and provide account provisioning			X
Management of Knowledge Governance			X
Provide content improvements to knowledge articles	X	X	X
Provide Incident Analysis for trends	X	X	X
Provide Level 1 support for business applications identified by ITS	X		

Requirement	Responsibility		
	Contractor (Level 1)	Contractor Break-Fix (level 2)**	ITS
Provide level 2 support for business applications identified by ITS			X
Provide L1 Voice Over Internet Protocol (VOIP) Support	X		
Provide L2 Voice Over Internet Protocol (VOIP) Support			X
Provide Mobile Device Management Tool			X
Provide new site consultations and scheduled install, move, add, change work			X
Provide Survey Content Development			X
Manage and provide printer and desktop deployment including tasks associated with the PC refresh cycle			X
Provide root cause analysis			X
Manage and provide Problem Governance			X
Distribute Customer Satisfaction Survey for Incidents and Service Requests (ServiceNow)			X

**The responsibility matrix shows examples of IT operations and the responsibility or ownership of tasks within that area. The responsible party is designated with an "X".*

*** Please refer to **Appendix J - NYS Site Inventory by County** for details about Site Locations & Counts and **Appendix K - NYS Sites Port Inventory** for details about the Number of Users at Each Site.*

SECTION 3 - SERVICE LEVEL REQUIREMENTS, CREDITS FOR NON–PERFORMANCE, EARNBACKS AND REPORTING REQUIREMENTS

1. The Contractor must meet or exceed the Service Level requirements (SLRs) outlined in this section. The SLR Credit is measured within a window of each 12 months beginning with the Steady State. Table 3 – Service Level Requirements includes a list of (A) Service Measures, (B) SLR Measurement (C) Expected Service Level per 12-month period (D) Service Level Credit % of "At Risk" amount.

"At Risk" amount – The amount used as a basis for calculating the SLR Credits. This **"At Risk"** amount is **10% of the sum of the invoices for the 12-month period**. This is the maximum amount the Contractor is at the risk of paying as credits to ITS due to not meeting the SLRs during a 12-month period.

SLR Credits - Beginning with Steady State, Contractor's failure to meet or exceed the SLRs, as described in Table 3 – Service Level Requirements, will result in SLR Credits to ITS. For each month during the 12-month period, the Contractor fails to meet the SLR Measurement (B) for a Service Measure (A), the SLR Credit will be equal to the Service Credit % (D) for that measure times 1/12th of the sum of the invoices for the 12-month period. If there are multiple occurrence of failure in a given 12-month period, the SLR Credit will be accumulated for each occurrence during that 12-month period. In any circumstances, the total SLR Credits for the 12-month period cannot exceed the "At Risk" amount.

"Earn Back" methodology – Beginning with Steady State, Contractor shall have **"Earn Back"** opportunities with respect to Service-Level Credits. During each 12-month period of the contract, if the Contractor achieved a Yearly Performance Average in a SLR Measurement that was greater than, or equal to, the **Expected Service Level (C)** in effect for such SLR Measurement during the 12-month period, described in Table 3 – Service Level Requirements, then Contractor shall be relieved from paying any SLR Credits tentatively due to ITS during such 12-month period for that SLR Measurement.

"Unrelieved Service Level Credits" - For each 12-month period, any Service Level Credits that are not relieved via the "Earn back" methodology as described above shall be considered "Unrelieved Service Level Credits."

The monetary amounts associated with Unrelieved Service Level Credits shall be credited to ITS on the monthly invoice reflecting charges for the first month of the next 12-month period immediately following the 12-month period in which such Unrelieved Service Level Credits occurred, or if there shall be no further invoices, then the Contractor shall pay the amount of the Unrelieved Service Level Credits to ITS within fifteen (15) calendar days after the end of the last month of the Contract Term. If the final 12-month period is less than twelve (12) months long, the Expected Service Levels (C) for the period will be substituted for the missing month's measurement value.

If, during such 12-month period, Customer added a SLR Measurement, Contractor shall calculate the Yearly Performance Average for such period based on twelve (12) months of data by (a) using all available performance measurements for such period, excluding measurements obtained during any baselining period or when the SLR Measurement was initiated, and (b) for any months where no such data are available, substituting the Expected Service Level for the missing month's measurement value.

See Appendix C for an example of Service Level Credits, Unrelieved Service Level Credits, and maximum At Risk Amount

Table 3 – Service Level Requirements

(A) Service Measure	(B) SLR Measurement	(C) Expected Service Level					(D) Service Level Credit % of the "At Risk" amount
		Calendar Year 1	Calendar Year 2	Calendar Year 3	Calendar Year 4	Calendar Year 5	
Service Desk General							
Availability of Service Desk 24 x 7 x 365	Monthly Average	99.99%	99.99%	99.99%	99.99%	99.99%	4%
Speed to Answer - 30 seconds or less	Monthly Average	98%	98.5%	99%	99%	99%	4%
Abandoned Call Rate	Monthly Average	6%	4%	3.5%	3%	3%	3%
Email Response Time - 1 hour or less	Monthly Average	98%	98.5%	99%	99%	99%	3%
Chat Response Time - 30 seconds or less	Monthly Average	98%	98.5%	99%	99%	99%	3%
Voice Mail Response Time - 30 minutes or less	Monthly Average	98%	98.5%	99%	99%	99%	3%
Service Desk Incident Resolution							
First Contact Resolution	Monthly Average	70%	75%	80%	80%	80%	4%
Reopened Incidents	Monthly Average	10%	9%	8%	7%	7%	3%
Password Reset	Monthly Average	80%	85%	90%	90%	90%	3%
Incident Assignment - less than 15 minutes	Monthly Average	75%	80%	85%	90%	95%	3%

(A) Service Measure	(B) SLR Measurement	(C) Expected Service Level					(D) Service Level Credit % of the "At Risk" amount
		Calendar Year 1	Calendar Year 2	Calendar Year 3	Calendar Year 4	Calendar Year 5	
Alert Monitoring							
Alert Monitoring - less than 15 minutes from receipt of alert	Monthly Average	90%	95%	95%	95%	95%	4%
End User Break-Fix							
Response Time - Standard Sites- less than 4 hours during NYS Normal Business Hours	Monthly Average	90%	95%	95%	95%	95%	3%
Response/Resolution Time - Priority Sites - less than 4 hours 24 x 7 x 365	Monthly Average	90%	95%	95%	95%	95%	3%
Resolution Time - Next Business Day[1] - for locations within a 50 mile radius of Albany, Syracuse, Buffalo, all NYC boroughs, and all of Long Island	Monthly Average	90%	95%	95%	95%	95%	3%
Resolution Time - 2 Business Days or Less[1] - for other locations not listed above	Monthly Average	90%	95%	95%	95%	95%	3%
Customer Satisfaction							
Customer Satisfaction	Quarterly Survey	75%	80%	80%	80%	85%	3%

[1]The Contractor will not be penalized for failure to meet service level agreements at Secure Sites if ITS agrees that the delay was due to adverse conditions at the Secure Site that were beyond the control of the Contractor (for example a prison is in lock-down).

3.1 REPORTS

3.1.1 Service Desk Reporting

All reporting requirements will be driven from ServiceNow and appropriate Contractor tools, which will be the systems of record for all services delivered by the service desk. Summary and real-time data should also be accessible to ITS for ad-hoc and on-demand reporting.

2. The Contractor must provide service desk reports on a daily, weekly, monthly and annual basis.
3. The Contractor will provide and distribute reports for operational performance metrics from Contractor's ACD system.
4. The Contractor will create and deliver custom reports from the data that is available in ServiceNow and other systems under Contractors control and used to perform the Services set forth here in this document as requested by ITS.
5. The Contractor will create and deliver any additional reports requested by ITS as agreed upon by Contractor and ITS.

3.1.2 Performance Reporting

6. The Contractor must provide monthly reports to ITS that describe the Contractor's performance in all the elements of the SLR in the format provided in Appendix C.
7. Contractor agrees to provide written monthly reports to ITS, by the 7th calendar day of each month, regarding compliance for each SLR Measurement as follows:

- Statistics on Contractor's monthly actual and projected invoice amounts for Service Desk and Break-Fix End User Support Services; and
- Statistics on Contractor's actual monthly performance;
- Remediation plans for any areas of performance where SLR(s) have not been achieved.

Appendix C will automatically calculate:

- Average Performance 12-month period to date;
- Sum of actual and projected invoices for reporting period; and
- Sum of Service Level Credits tentatively due to ITS for Service-Level Defaults; subject to the maximum "At Risk" Amount.

8. Within fifteen (15) business days after the end of the 12-month period, Contractor shall provide a written report to ITS for each SLR Measurement as follows:

- Statistics on Contractor's monthly actual and projected invoice amounts for Service Desk and Break-Fix End User Support Services; and
- Statistics on Contractor's actual monthly performance;
- The sum of Unrelieved Service Level Credits due to ITS for Service-Level Defaults during the 12-month period; subject to the maximum "At Risk" Amount; and
- Remediation plans for any areas of performance where SLR(s) have not been achieved.

9. In addition, Service Levels Reports for all service measures must be available at least daily. ITS prefers a solution that provides access to the Contractor's Call Management System for real time and historic reporting, with both standard and custom report functionalities.

3.1.3 Status meetings

Contractor further agrees, at a minimum to:

10. Meet monthly with ITS to review service level performance and ensure that it is consistent with the scope of the requirements, and prepare a report of any remedial action required.
11. Meet quarterly with ITS Management to review service performance over past quarter, review service trends and reporting measures, review action items and resolution, identify opportunities and areas for improvements.

SECTION 4 - CONTRACTOR QUALIFICATIONS AND STAFFING

4.1 MANDATORY BIDDER ELIGIBILITY QUALIFICATIONS

The following are the mandatory minimum Bidder qualifications that must be met by the Prime Contractor. If these requirements are not met, the State shall deem the Proposal as non-responsive and eliminate the Bidder from further consideration. Bidders (and their predecessor business Enterprises) must:

1. Have a minimum of seven (7) ~~ten (10)~~ years of experience providing service-desk support services of similar size and scope to ITS requirements as set forth in this RFP, to ~~Public Sector E~~entities of more than 50,000 users within the continental US.
2. Have a minimum of seven (7)~~ten (10~~) years of experience providing End User Break-Fix Support services to multiple geographic locations of similar size and scope to ITS requirements set forth in this RFP.
3. Have a minimum of three (3) years of experience providing services of similar size and scope to ITS requirements as set forth in this RFP to Public Sector Entities.
4. Be registered with the NYS Department of State as an entity authorized to conduct business in New York State.

4.2 KEY PERSONNEL

ITS requires that the following positions be designated as Key Personnel. Key Personnel are considered essential to the Contractor's ability to provide the services required under this RFP successfully, and Contractor must ensure the continued availability of Key Personnel for the duration of the Contract and shall not choose to replace Key Personnel without the prior written approval of ITS. Upon approval by ITS, the Contractor must provide the resumes of potential replacements with equal or better qualifications for ITS review, selection and approval within seven (7) business days, or as otherwise agreed to by ITS. The departing Key Personnel must transition responsibility to the replacement personnel in accordance with a written Start-Up plan preapproved by ITS.

- Engagement Management – responsible for managing the contractual relationship with the State and oversight of the delivery of services; serves as the primary point of contact for NYS. The Engagement Management role is accountable for the successful completion of all aspects of the resulting Contract.
- ITS Service Desk Management – responsible for oversight of the service desk support services. The Service Desk Management role is subject to emergency call-outs at all times. The Service Desk Management role has the responsibility to:
    - Monitor high-severity Incidents according to the documented procedures in the ServiceNow knowledge base.
    - Monitor incoming Incidents for trends related to potential service outages and subsequently correlate to "master" Incidents
    - Escalate Severity 1 and 2 Incidents to the ITS Incident Management team
- Break-Fix Support Management - responsible for oversight of the Contractor End User Break-Fix Support staff.

The Qualifications for Key Personnel are specified in Appendix H – Role Descriptions.

4.3 REMOVAL AND REPLACEMENT OF CONTRACTOR STAFF

1. ITS may refuse access to or require removal and replacement of any Contractor staff that ITS determines poses a security risk to the State or has a work performance that ITS finds inadequate or unacceptable or otherwise fails to meet ITS business requirements or expectations.
2. Upon request by ITS for a Contractor staff member to be replaced, Contractor must replace such staff member within fifteen (15) business days of receipt of written notice. The replacement must possess skills and experience which are equivalent to or better than those of the predecessor.
3. Should Contractor become aware that any Contractor staff member provided under this Contract poses an unacceptable risk to the State, or has been arrested for a felony or misdemeanor offense that may disqualify such Contractor staff member from operating, or having access to ITS systems and data, Contractor shall immediately notify ITS. Should ITS decide that the Contractor staff member must be replaced, Contractor shall immediately remove the staff member and propose a qualified replacement.

4.4 PROFESSIONALISM

Contractor personnel shall present a professional appearance and wear business casual apparel appropriate to their assignments.

SECTION 5 - ADMINISTRATIVE REQUIREMENTS AND INFORMATION

5.1 INFORMATION TO BE COMMUNICATED IN WRITING OR BY E-MAIL

All Proposals submitted in response to this RFP and all Questions, Communications and Submissions to ITS must be written in the English Language with quantities expressed using Arabic numerals. All Prices shall be expressed, and all payments shall be made, in United States Dollars ($ USD). Any proposal or submission received that does not meet the above criteria may be rejected at the sole option of ITS.

ITS shall provide all information, responses to questions and communications concerning the solicitation in writing or by electronic mail to all vendors who have pre-registered for and attended the Pre-Bid Conference and timely filed a Notice of Intent to Bid as required by this RFP. Such information will include, but may not be limited to, answers to Bidder inquiries; RFP clarifications and amendments; clarification of Process rules and Evaluation criteria. ITS has established a procurement website for the purpose of disseminating information relating to this procurement and vendors are encouraged to monitor this website. The website URL is provided on the beginning pages of this RFP.

5.2 MANDATORY REQUIREMENT - PRE-BID CONFERENCE

Attendance at the Pre-Bid Conference is mandatory. The Pre-Bid Conference will be held on the date and at the time and location specified in the Calendar of Events on the beginning pages of this RFP.

Vendor representatives seeking to attend the Pre-Bid Conference shall pre-register by submitting a completed Pre-Bid Conference Registration Form, Attachment 1B, for receipt by the ITS Sole Designated Contact identified on the beginning pages of this RFP by the date and time specified in the Calendar of Events. Only the individuals identified on the Attachment 1B response document will be allowed to attend the Pre-Bid Conference. Prospective Bidder's legal representatives, management and technical staff are encouraged to attend.

Vendor representatives who arrive more than fifteen (15) minutes after the official start time of the Pre-Bid Conference will be denied admittance to the Pre-Bid Conference, and the vendor will be disqualified from further participation in this procurement process.

Vendor representatives must provide photo identification (e.g., State Driver's License or Passport), sign the visitor log, obtain a visitor badge and be directed (or escorted, if required) to the Pre-Bid Conference Room. Vendors should be aware that this process may take additional time, and that the 15 minutes or less lateness requirement will not be waived.

Vendors are asked to submit any written questions concerning the specifications, bid proposals or procurement process via electronic mail to the ITS Sole Designated Contact on or before the date set forth in the Calendar of Events. **Neither phone nor fax inquires will be accepted.** Written and verbal questions may also be submitted during the Pre-Bid Conference and up to the deadline for submission of vendor's questions set forth in the Calendar of Events. The submission must cite the particular RFP page, section and paragraph number, where applicable. ITS has provided an Inquiries Template form, Attachment 2, which provides the format/content vendors are requested to use in submitting questions. Submission of questions does not constitute a protest under the ITS Bid Protest Policy.

During the Pre-Bid conference, ITS will make best efforts to answer questions received by the deadline for submission of pre-bid conference questions. Any oral responses given by the State at the Pre-Bid Conference are unofficial and shall not be relied upon in the preparation of Bid Proposals unless confirmed in the official written response. The State reserves the right to change any oral response previously given by the State at the Pre-Bid Conference in the official written response.

5.3 MANDATORY REQUIREMENT – VENDOR MUST TIMELY FILE A NOTICE OF INTENT TO BID

Filing of Attachment 1A - Intent to Bid, is mandatory. Failure to timely submit a complete notice of Intent to Bid disqualifies a vendor from further participation in this procurement. Vendors must submit a complete Mandatory Intent to Bid form for receipt by the Sole Designated Procurement Contact no later than the date and time specified on the Calendar of Events.

Partial submissions are not permissible and will disqualify the vendor from further participation in this procurement. ITS shall not be responsible for advising vendors of incomplete submissions.

Submission of an Intent to Bid does not obligate a vendor to submit a bid proposal; however, **failure to timely submit a complete notice of Intent to Bid disqualifies a vendor from further participation in this procurement.**

5.4 SUBMISSION OF WRITTEN QUESTIONS

Any questions related to this RFP or requests for clarification, must be submitted via electronic mail to the ITS Sole Designated Contact by the date and time specified in the Calendar of Events. **Neither phone nor fax inquires will be accepted.** Administrative issues pertaining to sending/receiving email through the designated mailbox may be reported at the telephone number identified on the Cover page of this RFP.

The submission must cite the particular page, section and paragraph number, where applicable. ITS has provided an Inquiries Template form, Attachment 2, which provides the format/content vendors shall use in submitting questions by electronic mail regarding this RFP. The questions shall be attached to the electronic mail in Microsoft Word, Excel and/or Adobe Acrobat formats, and in Windows file format.

Note: Vendors are encouraged to submit questions as early and often as necessary during the Question and Answer period, but no later than the deadline for submission of vendor's questions specified in the Calendar of Events. ITS will make every effort to respond to questions as quickly as possible.

5.5 ISSUANCE OF OFFICIAL RESPONSES TO VENDORS' QUESTIONS

All questions and answers will be distributed to all vendors that submit a timely Notice of Intent to Bid and who have registered for and attended the Pre-Bid Conference.

5.6 ITS RESERVES THE RIGHT TO MODIFY REQUIREMENTS

ITS reserves the right to modify the requirements of this procurement and RFP and to modify, correct and clarify requirements at any time provided that modifications would not materially benefit or disadvantage a Bidder.

5.7 COSTS INCURRED PRIOR TO CONTRACT APPROVAL

The State of New York and ITS are not liable for any cost incurred by a Bidder in preparation for, or prior to, the approval of an executed contract by the Attorney General and the Office of the State Comptroller. No cost will be incurred by ITS for the offer's or prospective Bidder's participation in any pre-contract award activity. Submission of response to this RFP shall not be construed as a commitment by the State to proceed with this project.

5.8 MANDATORY REQUIREMENT - PRICE PROTECTION

The Bidder agrees that all of the prices, terms, warranties and benefits established in the Agreement are comparable to or better than the equivalent terms being offered by the vendor to other customers using similar scope and volume of services. If the Bidder shall, during the term of this Agreement, enter into arrangements with any other customer providing greater benefits or more favorable terms, the Contract shall thereupon be deemed amended to provide the same to the State.

5.9 PROCUREMENT RECORD

ITS shall maintain a Procurement Record which documents all decisions regarding the procurement process, particularly the quantification of criteria used to determine an award based on Best Value; or where not quantifiable, the justification which demonstrates that Best Value will be achieved pursuant to State Finance Law § 163(9)(g). The Procurement Record will be forwarded to the Office of the State Comptroller and as applicable to the Office of the Attorney General (Department of Law) in support of their respective evaluation activity.

5.10 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 proposals. Once an award has been made, Bidders may submit a written request for a debriefing as to why their proposal 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 Proposal. ITS will not provide Bidders with information about another Bidder's Proposal. This is also an opportunity for a Bidder to learn how to improve future bids.

5.11 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 Proposal, 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 Appendix E.

5.12 STATE'S RESERVED RIGHTS

This is a Best Value procurement. ITS and the State of New York intend to acquire goods and services that represent the "Best Value." ITS reserves the right to:

a) Reject any and all proposals received in response to the RFP;

b) Withdraw the RFP at any time, at the Agency's sole discretion;

c) Make an award under the RFP in whole or in part;

d) Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;

e) Seek clarifications and revisions of proposals;

f) Use proposal information obtained through site visits, management interviews and the State's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the Agency's request for clarifying information in the course of evaluation and/or selection under the RFP;

g) Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;

h) Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent RFP amendments;

i) Change any of the scheduled dates;

j) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;

k) Waive any requirements that are not material;

l) Negotiate with the successful Bidder within the scope of the RFP in the best interests of the State;

m) Conduct contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;

n) Utilize any and all ideas submitted in the proposals received;

o) Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 120 days from the bid opening;

p) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation;

q) At any time prior to contract execution, accept or reject any and all Proposals, or separable portions of Proposals, and waive minor irregularities and/or omissions in Proposals if the State determines the best interests of the State will be served;

r) In its sole discretion, accept or reject illegible, incomplete, or vague bids, and its decision shall be final;

s) During the evaluation process, at its sole option, seek clarification from a Bidder for the purpose of assuring ITS's full understanding of the Bidder's responsiveness to the RFP requirements. This clarification information, if required in writing by ITS, must be submitted in writing in accordance with the formats as prescribed by ITS at the time it is requested by ITS, and if

received by the due date requested, shall be included as a formal part of the Bidder's Proposal. Failure to provide required information by the specified due date may result in rejection of the Bidder's Proposal. Bidders may be required to participate in individual presentations. Presentations and clarification information provided pursuant to a request by ITS if any will be considered in the evaluation process;

t) Eliminate mandatory requirements if deemed to be in the State's best interests, or negotiate additional terms and conditions in any resulting Contract that are to the State's advantage;

u) Amend the RFP if it becomes necessary in the sole discretion of ITS, and in such an event addenda will be provided by ITS to all Bidders who attended the pre-bid conference;

v) Establish evaluation criteria relating to quality, quantity, performance and cost; establish the relative importance of each criterion; and evaluate proposals as well as award contracts on the basis of these criteria. As a result, service and technology procurements administered through an RFP process would not necessarily be awarded to the responsible Bidder submitting the lowest priced proposal pursuant to State Finance Law §§ 163(4)(d), (7) and (9)(b));

w) Award a contract for any or all parts of a proposal and negotiate contract terms and conditions to meet Agency program requirements consistent with the solicitation; and,

x) Establish that in the event two proposals are found to be substantially equivalent, price shall be the basis for determining the award recipient or, when price and other factors are found to be substantially equivalent, the determination of the Agency head or designee to award a contract to one or more of such Bidders shall be final. The basis for determining the award shall be documented in the Procurement Record.

y) Adopt all or any part of a Bidder's proposal in selecting the optimum configuration;

z) Request current Bidder financial statement(s) that demonstrate Bidder's ability to service a contract with a dollar sales volume similar to the scope of this RFP, and request additional documentation from the Bidder or request reports on financial stability from independent financial rating services;

aa) Reject any Bidder who does not demonstrate financial stability sufficient for the scope of this RFP; and,

bb) Pre-approve all proposed Subcontractors.

5.13 CONTRACT TERM

The Contract awarded in this procurement shall not be deemed executed unless and until it shall have been approved by the Attorney General of the State of New York and the Comptroller of the State of New York or their respective staff designated for that purpose

The Contract shall commence upon approval by the Office of the State Comptroller and shall continue for a period of five (5) years. Except as established in Price Protection, Section 5.8 (as negotiated), the Contract will be subject to amendment only upon mutual written agreement of the parties, which agreement must be approved by the Attorney General and the Comptroller of the State of New York. The State shall have the right to renegotiate the terms and conditions of the Contract in the event applicable State or Federal law, policy, rules, regulations and guidelines are altered from those existing at the time of the original contract in order to be in continuous compliance therewith.

5.14 TIME IS OF THE ESSENCE

Prime Contractor understands that prompt performance of all services and delivery hereunder is required by ITS in order to meet third party obligations. Time is of the essence in the resulting Contract and will be a substantial and a material term of the Contract. In the event of any anticipated or actual delays in meeting any deadlines or service level requirements (SLRs) associated with this contract, which are located in

Section 3, Prime Contractor shall provide additional personnel, software, hardware or any other resource deemed beneficial as required and at no additional charge to ITS, in order to meet the managed service requirements in a timely manner.

Notwithstanding the above, any dates or times at which Prime Contractor is required to make specified performance under the contract, the time and dates may be postponed to the extent that Prime Contractor is prevented from meeting such dates or times by ITS or by causes beyond Prime Contractor's reasonable control. Any and all extensions must be agreed to in writing by the parties.

5.15 CONTRACT FORMATION

The Contract will incorporate this RFP, all Appendices, all Attachments, all submissions, the Bidder's Bid Proposal, clarifications and additional information issued by ITS during the course of this procurement and additional terms which may be agreed to by the parties in writing. Execution by the successful Bidder shall not be deemed final until the execution of the Contract. The Contract will be deemed executed upon, and will not be considered fully executed and binding until, receipt of approval by the Attorney General of the State of New York and the Comptroller of the State of New York or members of their staff designated by them for that purpose.

The State shall have the right to renegotiate the terms and conditions of the Contract in the event applicable State or Federal law, policy, rules, regulations and guidelines are altered from those existing at the time of the original contract in order to be in continuous compliance therewith. The Contract is subject to amendment only upon the mutual written agreement of the Parties, which agreement must be approved by the Comptroller.

During contract negotiations, the State expects to have direct access to Bidder personnel who have full authority to make commitments on behalf of the Bidder. Any negotiated contract must conform to the laws of New York State.

5.16 REQUIREMENT - APPENDIX A STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

Appendix A- Standard Clauses for New York State Contracts annexed hereto at Appendix A is incorporated herein by reference and made a part of this agreement as though fully set forth in its entirety.

5.17 REQUIREMENT - DISCRIMINATORY JURISDICTIONS

Bidders are hereby notified that state agencies and authorities are prohibited from entering into contracts with businesses whose principal place of business is located in a discriminatory jurisdiction. Discriminatory jurisdiction is defined as a state or political subdivision which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State Business Enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. A list of discriminatory jurisdictions is maintained by the commissioner of the New York State Department of Economic Development.

5.18 NEGOTIATIONS WITH THE NEXT HIGHEST BIDDER

In the event that ITS should be unsuccessful in negotiating a contract within ten (10) business days from the date of the notice of award with the originally selected Bidder, ITS may at any time following the tenth business day at its option begin negotiations with the next highest scored Bidder and in such an event ITS will give notice to all Bidders that it has done so.

5.19 PRIME CONTRACTOR

Bidder is required to serve as the Prime Contractor for this engagement. The Prime 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. The Prime Contractor is responsible for payment of all subcontractors and suppliers, including all third-party equipment and service providers contracted by or through the Prime Contractor in performance of the agreement. Where equipment or services are supplied by or through the Prime Contractor under the Contract, Prime Contractor must assume full integration responsibility for delivery, installation, maintenance, performance, and warranty support services for such items. The Prime Contractor shall also be responsible for payment of any license fees, rents, or other monies due third parties for acquisition of sites or facilities, and for such other site manager responsibilities as set forth in the Contract. It shall be the responsibility of the Prime Contractor throughout the Contract term, at its cost and expense, to provide periodic design and technical presentations on behalf of ITS.. The subject matter, location and frequency of such meetings shall be determined by ITS.

It is understood and agreed that the legal status of the Prime Contractor, its agents, officers and employees under the Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the State, or of ITS, and therefore they are not entitled to any of the benefits associated with such employment. The Prime Contractor agrees, during the term of the Contract, to maintain, at Prime Contractor's expense, those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and to provide the State with certification of such insurance upon request. The Prime Contractor remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

Additionally, in recognition of the critical public safety nature of the services to preservation of the health, safety and welfare of the citizens of the State, all contracts or subcontracts with subcontractors must contain an express provision that the subcontract is not further assignable or transferable without the written consent of the New York State Comptroller.

5.20 SUBCONTRACTORS

Bidders may submit proposals that include subcontractors. 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, for example in the Start-Up Plan section of the Bidder's proposal, the specific subcontractor proposed to perform the Prime Contractor's obligation must be identified, but such identification does not relieve the Prime Contractor of any responsibility for performance under the contract with ITS. All employees of and subcontractors will be required to execute confidentiality agreements and non-disclosure agreements, or other similar agreements, including but not limited to CJIS. ITS reserves the right to require fingerprint and security background checks of subcontractor personnel providing services to the Prime Contractor in connection with this RFP and the resulting Contract.

The Prime Contractor is required to include in all subcontracts the affirmative obligation of all previously approved subcontractors to disclose to Prime Contractor and to the State any material change to the information disclosed in Attachment 18 *Technical Proposal* that occurs after bid submission and during the Contract term. The State shall have the right to prospectively cancel the Contract, in whole or in part, for cause if it finds that such change materially adversely affects the best interests of the State.

ITS reserves the right to require the Bidder to have executed Contracts with all proposed key subcontractors 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 within a reasonable time to allow timely Contract award, such timeliness to be determined solely by ITS.

The Successful Bidder shall furnish a written copy of all subcontracts, and subsequent amendments thereto, to the State and certify the completeness thereof of all executed subcontracts or third-party agreements, which support the Prime Contractor's ability to furnish the products and services for this

engagement. In the context of this section, the phrases "certify the completeness thereof" and "certify the terms of third party agreements" shall mean that the Prime Contractor has fully disclosed all terms and conditions of the aforesaid subcontracts and/or third party agreements and will affirmatively disclose to the State any amendments thereto which occur subsequent to the certification. Failure to provide such information constitutes breach of contract. Any waiver of breach as a result 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.

Additionally, to the extent that the Prime Contractor identifies as a proposed subcontractor in its' proposal or under this Contract an entity which has independently executed a contract with the State of New York for similar services or products as those to be provided through Prime Contractor under this Contract, and such subcontractor's direct State contract imposes obligations, terms or conditions on the subcontractor which are more beneficial to the State than those set forth in the Contract resulting from this procurement as to such subcontractor's responsibilities under this Contract, the State reserves the right to:

A. require the Prime Contractor to incorporate into this Contract such more beneficial terms and conditions, and
B. require the Prime Contractor to deliver to ITS the subcontractor's written agreement to incorporate and honor such additional or beneficial terms to its obligations to ITS under this Contract, and
C. withhold the approval of subcontractor pending receipt by ITS of written agreements complying with a and b, above.

In the alternative, ITS reserves the right to delete any portion of work to be performed by such subcontractor from the scope of this Contract and to acquire such services under the independent State contract where the State determines it would be more advantageous to acquire such products or services directly.

5.21 TRADE SECRET MATERIALS

Proposals and supporting material submitted to ITS in response to this RFP are subject to the Freedom of Information Law (Public Officers Law, Article 6; hereinafter FOIL). Pursuant to section 87(2) of FOIL, records or portions thereof that "are trade secrets or are submitted to an Agency by a commercial Enterprise or derived from information from a commercial Enterprise and which if disclosed would cause substantial injury to the competitive position of the subject Enterprise" may be exempt from disclosure. In addition, pursuant to section 89(5)(a)(1-a) of FOIL, records or portions thereof that contain critical infrastructure information may be exempt from disclosure ("critical infrastructure" is defined in sections 86(5) of FOIL). A Bidder must follow the procedures below, if it intends to seek an exemption from disclosure under FOIL of either or both types of material. Where such claimed material is embedded in the Bid Proposal, it shall be the responsibility of the Bidder, at its sole cost and expense, to submit redacted versions of the Bid Proposal within ten (10) days of a request by the State.

Trade secret or proprietary materials or critical infrastructure information as defined by the laws of the State of New York must be clearly marked and identified as such by the Bidder upon submission. Bidders intending to seek an exemption from disclosure of claimed trade secret or proprietary materials or claimed critical infrastructure information under FOIL must, at 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 Bidder, or (ii) why the information constitute critical infrastructure information which should be exempted from disclosure pursuant to section 87(2) of the Public Officers Law. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

5.22 REQUIREMENT FOR CONTRACTS ESTIMATED TO BE $1,000,000 OR MORE:

Subsequent to the award of procurement contracts in an amount estimated to be $1,000,000 or more, the Prime Contractor will be required to document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors by showing they have (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 Contractor outreach conferences. If the Prime Contractor determines that New York State Business Enterprises are not available to participate on the contract as subcontractors or suppliers, the Prime Contractor shall provide a statement indicating the method by which such determination was made. If the Prime Contractor does not intend to use subcontractors, the Prime Contractor shall provide a statement verifying such.

Subsequent to the award of procurement contracts in the amount estimated to be $1,000,000 or more, Contractors will be required to notify New York State residents of employment opportunities and otherwise comply with New York State Finance Law Section 139-i.

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 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.

5.23 KEY EVENTS AND DATES

The key events and dates for this RFP are provided below. The State reserves the right to change any of the dates within this RFP.

Calendar of Events	
Event	**Date**
1. RFP Release Date	December 21, 2015
2. Deadline for Submission of Pre-Bid Conference Questions	January 5, 2016
3. Pre-Bid Conference Registration Deadline	January 6, 2016
4. Mandatory Pre-Bid Conference* Time: TBD Location: TBD, Albany, NY area	**January 8, 2016**
5. Deadline for filing Mandatory Notice of Intent to Bid:*	**January 15, 2016**
6. Deadline for Submission of Vendors' Questions	**January 15, 2016**
7. Issuance of Response to Submitted Questions	~~On or about January 22, 2016~~ On or about January 29, 2016
8. BID PROPOSALS DUE DATE	**~~February 1, 2016 at 4:00 PM EST~~** **February 19, 2016 at 4:00 PM EST**
9. Vendor Presentations	~~On or about Week of February 29th - March 4th, 2016~~ On or about Week of March 21st – March 24th, 2016
10. Site Evaluations	~~On or about Week of March 7th -11th, 2016~~ On or about Week of March 28th – April 1st, 2016
11. Anticipated Notification of Award	~~On or about March 25th, 2016~~ On or about April 14, 2016
12. Debriefing Request Deadline	No later than 10 business days from date of award announcement
13. Bid Protest Deadline	See Appendix E – Bid Protest Policy
14. Timeframe for Contract Negotiations	10 business days from date of award announcement
15. Timeframe for Contract Approval; Contract to Begin	Approximately 90 days
16. Start-Up period, beginning upon contract approval (Refer to section 2.5)	90 days
17, Stabilization Period, beginning on 91st day after Contract Approval (Refer to section 2.6)	90 days
18. Steady State begins	181 days after Contract Approval

*Mandatory Requirements: Filing of a Notice of Intent to Bid and attendance at the Pre-Bid Conference are mandatory prerequisites to further participation in this Procurement. ITS reserves the right, in its sole discretion, to alter the information and schedule shown above. In such an event, ITS will publish the notification on its website at: https://its.ny.gov/competitive-procurement-opportunities.

5.24 PROPOSAL 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 Proposal or for any work performed prior to the formal execution of a Contract. Proposals must be received by ITS on or before the date and time indicated in Section 5.23, Key Events and Dates. Bidder assumes all risks for timely, properly submitted deliveries. Bidder is strongly encouraged to arrange for delivery of bids to ITS prior to the date of the bid opening. LATE BIDS SHALL BE REJECTED. The received time of Proposals 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.

5.25 PROPOSAL VALIDITY

Proposals must remain open and valid for at least 270 days from the bid opening date, unless the time for awarding the Contract is extended by mutual consent of ITS and the Bidder. A Proposal shall continue to remain an effective offer, firm and irrevocable, subsequent to such 270-day period, until either tentative award of the Contract by NYS ITS is made, or withdrawal of the Proposal is made, in writing, by the Bidder.

5.26 BID OPENING RESULTS

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

5.27 IMPORTANT BUILDING ACCESS PROCEDURES FOR VISITORS AND HAND DELIVERIES

To access Core 4 in the Swan Street Building, all visitors must check in by presenting photo identification at the Security Desk and must comply with other requirements. Bidders who intend to hand-deliver bids should allow extra time to comply with these procedures. Bidders who intend to hand-deliver bids should ask the Security Desk to call the Designated Contacts indicated in this RFP or the Procurement and Contracts Support Unit. Building Access procedures may change or be modified at any time. This also applies to Bidders who use independent courier services. Bidders assume all risks for timely, properly submitted hand deliveries.

5.28 EXTRANEOUS DOCUMENTATION

Please ensure that the Technical, and Administrative/Financial submissions contain no extraneous documentation, sales literature, or other documentation. Extraneous term(s) including those submitted on standard, pre-printed forms (including but not limited to product literature, order forms, license agreements, or contracts) that are attached or referenced with Proposal shall not be considered part of the Bid or resulting contract but shall be deemed included for informational or promotional purposes only.

5.29 EXTRANEOUS TERMS AND CONDITIONS

Pursuant to Appendix B, §8, Extraneous Terms, a Bid must conform to the terms set forth in the Bid Documents, as 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. If a Proposal differs from the specifications in the RFP, the Bidder shall explain such deviation(s) or qualification(s) in their Proposal. Bidder is advised that ITS will not entertain any exceptions to Appendix A (New York State Standard Clauses). ITS will also not entertain exceptions to the RFP or Appendix B (General Specifications) that are of a material and substantive nature. Bidder should submit any extraneous terms or deviations with their Proposal in accordance with Appendix B §8, labeled as “Extraneous Terms” or “Supplemental Information.”

5.30 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 proposal ahead of the submission deadline, it may submit an amended Proposal any time prior to the Proposal Submission Due Date indicated in Key Events/Dates.

5.31 PROCESS FOR CHANGE REQUESTS

At any time during the term of this Contract, the State may make changes, subtractions or additions in any of the Equipment, Software, Documentation, Services and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of this agreement. Such changes will be subject to the unit costs itemized in the Contract or such other costs as may be mutually agreed between the Parties. All such changes shall be reduced to a written Change Request Form, Appendix N executed by both Parties, and shall otherwise be in accordance with the terms and conditions of this Contract. The Change Request Form shall be accepted and agreed to by both the State and the Prime Contractor as evidenced by the written signatures of the appropriate representatives of both Parties.

If any such change causes an increase or decrease in pricing or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of the New York State Comptroller and any applicable control agency, if required.

SECTION 6 - FORMAT, CONTENT AND DELIVERY OF BID PROPOSALS

6.1 DELIVERY OF PROPOSALS

All Bid Proposals must be submitted so that they are received by the ITS Sole Designated Procurement Contact at the address specified on the cover page of this RFP by the date and time specified in the Calendar of Events. All Bid Proposals must be organized and submitted in two parts: (1) a Technical Proposal and (2) a Financial/Administrative Proposal, each of which will be evaluated separately. Therefore, each part must be bound and packaged in separate, sealed and labeled envelopes/containers and clearly identified as to contents (e.g., Technical Proposal or Financial/Administrative Proposal).

All Bids must have a label on the outside of the package or shipping container with the following information:

BID ENCLOSED RFP C000382

ITS Service Desk Support and End User Break-Fix Services

DO NOT OPEN UNTIL February 1, 2016 at 4:00 PM EST

Faxed proposals and electronic submission will not be accepted. Proposals received by the State after the proposal due date and time specified in the Calendar of Events will be disqualified. If proposal packaging labels are not sufficient to identify the contents, ITS reserves the right to open packages for the purpose of identifying the source and contents of the package. All materials submitted by the Bidder become the property of the State of New York Office of Information Technology Services and may be returned only at the sole discretion of ITS.

6.2 PROPOSAL FORMAT AND CONTENT REQUIREMENTS

Bidders must submit a complete response to this RFP in conformance with the format, content and administrative requirements set forth below. The Bidder's response to this RFP must be submitted as two separately bound and identified proposals the first of which is the Technical Proposal and the second is the Financial/Administrative Proposal. The two packages must contain the following information. Failure to submit all of the following information will render the Bidder's proposal non responsive. Minor omissions deemed not critical may be corrected at the sole discretion of the State.

Table of Contents: Each package must include a Table of Contents.

Index Tabs: Each major section of the proposal must be labeled with an index tab that completely identifies the title of the major section as it is named in the mandatory Table of Contents.

Page Numbering: Each page of the proposal must be dated and numbered consecutively within each section submitted by the Bidder.

6.2.1 Package 1 - Technical Proposal

The Bidder must submit 12 bound paper copies, 1 of which must contain original notarized signatures, of their Technical Proposal. The Bidder must also submit two corresponding searchable electronic media copies on USB 2- or 3- compliant Flash Drives saved as Microsoft Word, Excel and/or Adobe Acrobat formats, and in Windows file format. Originally signed documents and drawings may be provided in Adobe Acrobat® pdf format, provided that the Bidder has submitted the documents containing the original signature elsewhere in its submission. Separate electronic media submissions must be made for the Technical and for the Financial/Administrative Proposals. Do not include information/files from the

Financial/Administrative Proposal or any Cost Data in the paper copies or on the electronic media which contains the Technical Proposal.

The items which must be included in the Technical Proposal properly completed, signed and notarized, where appropriate, are listed in Attachment 1.

The Bidder must complete the following Attachments:

- Attachment 1 – Proposal Checklist
- Attachment 13 - Firm Offer Letter and Conflict of Interest Disclosure
- Attachment 17 - Mandatory Eligibility Qualifications Form (Limit response to ten pages)
- Attachment 18 – Technical Proposal Content
- Attachment 19 – Requirements Verification and Traceability Matrix

Attachment 18 must include information as follows:

6.2.1.1 *Part 1 – Technical Proposal Overview*

The Technical Proposal Overview shall include:

- An Executive Summary, of not more than two pages, that provides a brief description of the proposed approach and work effort.

6.2.1.2 *Part 2 – Bidder's Experience – limit to 25 pages*

- The Technical Proposal shall demonstrate to ITS that the Bidder has experience delivering services similar in scale and scope to the engagement described in this RFP.
- The Bidder shall complete the Bidder's Experience form provided in Attachment 18 to describe its company background and past experience in the Technical Proposal.

6.2.1.3 *Part 3 – Engagement Approach*

Service Desk Support – limit to 10 pages

- The Technical Proposal shall include the Bidder's approach to meeting the Service Desk Support requirements specified in Section 2.1 including but not limited to:
  - Key Service Elements
  - Key Administrative Requirements
  - Key Performance and Service Improvement Requirements
  - Applications and Supported Services
- The Service Desk Support approach shall also include narrative describing:
  - the protocol for identification of concerns related to the delivery of services. This protocol should include designated contacts, resolution intervals, and levels of management to be utilized to correct and resolve such matters.
  - how requests received from VIP accounts will be handled.
- The Technical Proposal shall include the Bidder's approach to meeting the service levels specified in Section 3. Bidders shall describe their reporting capabilities and how they will meet or exceed the minimum SLR including detailed descriptions of how the service element is measured and provide sample reports for the service measures specified. (not included in the page limit).
- The Bidder shall include sample reports from other recent engagements that reflect its performance for similar Service Desk Support service level requirements.(not included in the page limit)

End User Break-Fix Support – limit to 10 pages

- The Technical Proposal shall include the Bidder's approach to meeting the End User Break-Fix support requirements and service levels specified in Section 2.2 including but not limited to:
  - Key Service Elements
  - Key Administrative Requirements
  - Service Site Requirements
  - End User Equipment Requirements
- The End User Break-Fix Support approach shall also include narrative describing:
  - the protocol for identification of concerns related to the delivery of services. This protocol should include designated contacts, resolution intervals, and levels of management to be utilized to correct and resolve such matters.
  - how requests received from VIP accounts will be handled.
  - plans for how staff will be dispatched to Emergency sites
- The Technical Proposal shall include the Bidder's approach to meeting the service levels specified in Section 3. Bidders shall describe their reporting capabilities and how they will meet or exceed the expected SLR including detailed descriptions of how the service element is measured and provide sample reports for the service measures specified. (not included in the page limit)
- The Bidder shall include sample reports from other recent engagements that reflect its performance for similar End User Break-Fix Support service level requirements. (not included in the page limit)

General – limit to 3 pages

- The Technical Proposal shall describe what differentiates your services from your competitors.
- The Technical Proposal shall describe what strategic advantages your organization brings to the relationship.
- The Technical Proposal shall describe how you will ensure compliance with Information Technology Infrastructure Library ("ITIL") as of the Contract Start Date and will maintain such level of compliance throughout the Term.
- The Technical Proposal shall describe how you will minimize the ServiceNow licensing burden on the state.

Customer Satisfaction – limit to 2 pages

- The Technical Proposal shall include the Bidder's approach to meeting the Customer Satisfaction service levels specified in Section 3.
- The Bidder shall include sample reports from other recent engagements that reflect its performance for similar Customer Satisfaction service level requirements.

Training – limit to 2 pages

- The Technical Proposal shall include the Bidder's approach to meeting the Training requirements specified in Section 2.4.

Start-Up Plan – limit to 15 pages

- The Technical Proposal shall include an initial Start-Up Plan describing the Bidder's approach to meeting the Start-Up requirements specified in Section 2.5. The final Start-Up plan will be negotiated with the Contractor and approved by ITS after award.
- The initial proposed Start-Up plan shall include:

- Approach to training Contractor staff on ITS systems, processes and procedures and knowledge base articles
- Start-Up strategy (e.g., which services first, how many at a time, how to coordinate management and ticket handling among responsible organizations during the transition)
- Knowledge transfer, reverse knowledge transfer and training approach.
- Roles and responsibilities during the Start-Up period, including Contractor and ITS staff
- Communications Plan including methods of communicating progress and issues, as well as recommendations on meeting frequency and attendees
- Escalation procedures for addressing concerns during the Start-Up period
- Criteria for Contractor acceptance of full responsibilities for services described in the RFP
- Start-Up schedule - The Start-Up plan shall include a detailed proposed Start-Up schedule to complete all of the requirements of this RFP. All critical milestones, deliverables, tasks, resources, timeframes, dependencies and the schedules' critical path shall be clearly delineated within the Start-Up project schedule. The Start-Up project shall include, at a minimum, the milestone deliverable specified in Appendix X. Bidders are expected to use their experience with similar projects to make recommendations on the required tasks and schedule.
- Bidder acknowledges that any Start-Up plan negotiated between the parties shall include milestone dates. Such milestone dates shall be of the essence of the contract, as they are required for ITS to meet customer obligations for uninterrupted service.

Risk Management Plan – limit to 5 pages

The Technical Proposal shall include a Risk Management Plan that clearly articulates the methods to be utilized in the identification of potential risks; the procedures utilized to predict the likelihood that a risk will occur; the methods for quantifying the potential impact to the managed service; and, the methods for development of action plans to mitigate the impact of that risk occurrence. The Bidder should include information regarding best practices and, if applicable, lessons learned during other engagements that have been incorporated into the proposed Risk Management Plan.

Quality Management Plan – limit to 2 pages

The Technical Proposal shall include a Quality Management Plan that describes the processes and techniques to measure, monitor and control, the quality of the services to ensure that the requirements of this RFP are met. The Bidder shall include information regarding best practices and, if applicable, lessons learned during other engagements that have been incorporated into the proposed Quality Management Plan; examples of bidder cost saving proposals that were implemented during other customer engagements; and describe how Bidder reports on and ensures compliance with regulatory and privacy requirements such as CJIS Security.

Change Management Plan– limit to 2 pages

The Technical Proposal shall include a comprehensive Change Management Plan that will encompass Organizational change, within a mutually agreed upon timeframe after contract approval for ITS approval. Organizational change allows for the capture of impact to people, process, and culture, within a mutually agreed upon timeframe after contract approval.

6.2.1.4 *Part 4 – Key Personnel and Staffing*

In this section of the Technical Proposal, Bidders shall demonstrate that proposed staff have the necessary knowledge and demonstrated ability to provide the services required by this RFP. Proposal should include information about the number of ITIL certified staff, and employee retention strategies. ITS reserves the right to reject any personnel proposed by Bidder and will review and approve any substitutions in staff from those proposed by the Bidder in its Proposal.

Key Personnel – limit to 1 page per person

The Proposal shall include experience profiles/resumes for all proposed Key Personnel (including any subcontractors) for the following roles:

- Engagement Management
- ITS Service Desk Management
- End User Break-Fix Support Services Management

The experience profiles/resumes for the proposed Key Personnel shall include:

- Name, with professional associations, certifications and degree, if required
- Proposed role on this engagement
- Number of years of relevant experience in that role
- Description of relevant experience

Staffing Plan – limit to 5 pages

The staffing plan shall include the following:

- A description of the strategy that will be used by Contractor to acquire human resources with the appropriate skills to staff the engagement and meet the obligations of this RFP.
- If subcontractors are to be used, the staffing plan shall describe the specific need for the expertise of the subcontractor and describe the contractual arrangements with the subcontractor.
- A description of methodologies Bidder currently uses and will use to minimize or eliminate attrition of staff.
- A description of the experience and actual training completed by existing staff to be assigned to the Contract
- A description of the training to be provided by Bidder to new hires before they are assigned to the Contract
- A description of whether staff will be dedicated to this engagement or shared with other engagement.
- A plan to notify ITS of any proposed changes for the key personnel. Include proposed procedures to replace the Key Personnel with someone possessing equal or greater qualifications if required by ITS.
- The staffing plan shall support End User Break-Fix Support for Standard, Priority, Secure and Emergency Services. To demonstrate to ITS that Bidder can provide the Services, Bidder shall include the following:
    - The location from which each End User Break-Fix support staff will be dispatched
    - The areas of NYS that each End User Break-Fix support staff will cover

6.2.1.5 *Part 5 - Site Visit Facility Information – limit to 3 pages*

ITS will conduct one (1) Service Desk site visit and one (1) monitoring site visit (if the monitoring site is different than the service desk site) to ensure Bidder can adequately provide for supporting the Service Desk Support and alert monitoring requirements. The Bidder shall provide its site visit location information and other information related to the facility on the Site Visit Facility Information Form (provided in Attachment 18) with its bid response. The site identified by the Bidder must be a facility that is within the continental US and representative of the type of facility or facilities that it is proposing to use to perform the work of the scale and scope required by this RFP.

6.2.1.6 *Verification of Bidders ability to meet RFP Requirements:*

Bidder shall complete Attachment 19 to verify its ability to meet the business requirements, and identify what section of bidders proposal in Attachment 18 addresses each requirement.

6.2.2 **Package 2 – Financial/Administrative Proposal**

The Bidder must submit 6 bound paper copies, 1 of which must contain original notarized signatures, of their Financial/Administrative Proposal. The Bidder must also submit two corresponding searchable electronic media copies on USB 2- or 3- compliant Flash Drives in Microsoft Word, Excel and/or Adobe Acrobat formats, and in Windows file format. Originally signed documents and drawings may be provided in Adobe Acrobat® pdf format, provided that the Bidder has submitted the documents containing the original signature elsewhere in its submission. Separate electronic media submissions must be made for the Technical Proposal and the Financial/Administrative Proposal. Do not include information/files from the Technical Proposal in the paper copies or on the electronic media which contains the Financial/Administrative Proposal.

The items which must be included in the Financial/Administrative Proposal properly completed, signed and notarized, where appropriate are listed in Attachment 1.

ITS is seeking pricing as follows:

1. Service Desk and End User Break-Fix Support Services Pricing

This pricing category includes the costs for all mandatory services related to providing Service Desk and End User Break-Fix Support Services. Bidders must provide fixed monthly per-user pricing for each year of the 5 year contract, assuming 115,089 Active O365 End Users, for evaluation purposes only. (Worksheet 2)

2. Optional Emergency Support Pricing

This pricing category includes the hourly rates for all costs associated with providing optional Emergency Operations Center staffing. Bidders should note that although pricing is required, ITS, in its sole discretion, may determine whether or not to exercise this option. For evaluation purposes only, ITS will assume 5,000 hours of emergency services at the hourly rate for the proposed title. Hourly pricing should be provided for technician role only. (Worksheet 3)

3. The Cost Summary Proposal

The Cost Summary Proposal (Worksheet 1) will auto-populate based on the proposal data entered by the vendor in in Worksheets 2-3. The Total Costs shown in cell C11 will be used for evaluation purposes.

General Instructions:

When completing the Financial Proposal Attachment 8 spreadsheet, Bidders should follow the instructions below. The pricing provided within the Pricing Proposal must include ANY AND ALL fees, charges, or costs for the duration of the contract, including:

- All direct and indirect costs, as well as all overhead, fees, and profit, including, but not limited to:
  - Labor, material, license and equipment costs
  - Administrative, reporting or other requirements, transition costs, overhead costs, and profit
  - Travel costs, parking fees, and any other ancillary fees and costs (permits, licenses, insurance, etc.)
  - Services not explicitly stated in these specifications but necessarily attendant thereto, as applicable to the associated item for which the rate/fee is being quoted.
- All proposed pricing will be considered the maximum price for the entire duration of the resulting contract (firm offer).
- All proposed prices must be firm for 270 calendar days (from date of Proposal submittal).

- The accuracy of calculations and formulas used to generate the proposed pricing is the responsibility of the Proposer.
- All proposed costs must include all proposed services required to meet the applicable RFP requirements.
- All terminology used in the Cost Proposal must be consistent with and correspond to the terminology used in the Technical Proposal.
- Individual worksheet instructions are provided at the bottom of each worksheet.

NOTE: Total costs will be determined using the utilization estimates as outlined in Attachment 8. Actual utilization during the performance of the contract may vary.

6.3 MULTIPLE SUBMISSIONS

Provided that each submission meets all of the mandatory requirements of this RFP, Bidders may separately submit more than one proposal for the purpose of offering alternative solutions. Bidders are cautioned that because of the possibility of any one proposal being deemed non-responsive, that each of any multiple proposals submitted must be complete and must not reference any other submission, and the Bidder must provide a summary of the differences between multiple proposals in a separate section in each proposal submitted to ITS. Multiple proposals received from the same Bidder will be separately evaluated by ITS as if each proposal were the sole submission of the Bidder.

Only one site evaluation visit per Bidder will be made by ITS. The site evaluation score, therefore, will be used for all submissions for the Bidder.

SECTION 7 - EVALUATION METHODOLOGY

7.1 OVERALL PROPOSAL EVALUATION PROCESS

The New York State Office of Information Technology Services expects to award this engagement to one (1) Bidder.

Pursuant to Article XI of the State Finance Law, the basis for an award of this engagementis a best-value offer which optimizes quality, cost and efficiency, among responsive and responsible Bidders, and which is consistent with the best interest of New York State.

The State intends that all proposals will be evaluated uniformly and consistently, ensuring Bidders that each has an equal opportunity to be considered. The evaluation process will be conducted by a committee selected by the State.

Bidders may be requested to clarify contents of their proposals. No Bidder will be allowed to alter its proposal or add new information after the filing date. Minor omissions may be corrected at the discretion of the State. In addition to evaluating the material submitted by the Bidder in response to this RFP, ITS reserves the right to consider any and all additional sources of information and to use that information in determining its final bid selection.

Bidders are hereby apprised of the relative importance or weight of the cost criterion compared with the overall non-cost criterion as follows, with the evaluation criteria being applied equally and uniformly in the evaluation of proposals:

The Technical Preferred Evaluation will account for 70% of the total evaluation scoring at 70 out of 100 total points, with the remaining 30% of the evaluation of 30 out of 100 total points based on the Cost Proposal.

7.2 COMPLETENESS REVIEW

After the bid opening, each proposal will be screened for completeness and conformance with the requirements as specified in Section 6 (Proposal Format, Content and Delivery Requirements) and Attachment 1, Proposal Checklist. Proposals that do not meet the requirements as set forth in this RFP may be deemed non-responsive, removed from further consideration and the Bidder notified accordingly. Proposals that pass the Completeness Review will proceed to the Technical Mandatory Evaluation.

In the event of minor omissions, proposals may tentatively be deemed to pass the Completeness Review. Proposals that tentatively pass the Completeness Review can be disqualified if the Bidder subsequently fails to correct the minor omission.

7.3 TECHNICAL MANDATORY EVALUATION (PASS / FAIL)

Proposals submitted by Bidders will be evaluated on a Pass/Fail basis to determine whether all of the mandatory requirements described in Section 4.1 of this RFP have been met. Proposals that do not meet all mandatory requirements will be deemed non-responsive and will not be further evaluated and the Bidder will be notified accordingly. Bidders that appear to meet mandatory requirements will proceed to the Technical Preferred and Financial Evaluations.

Bidders can be disqualified (during a subsequent portion of the technical preferred evaluation) if it is determined at any time during the evaluation that the Bidder did not meet all of the mandatory requirements specified in Section 4.1of the RFP.

7.4 FINANCIAL (COST) EVALUATION (30 POINTS)

The Financial Evaluation will be worth 30 points and will consist of an evaluation of the Bidder's Financial/Administrative Proposal response to all of the elements described in Section 6.2.2 of the RFP. The Financial Evaluation will be as follows:

30 points will be based on total cost services for the five (5) year contract term (Attachment 8, worksheet 1), including the Service Desk and Break-Fix End User Support services (worksheet 2), and the estimated cost for optional Emergency Support services (worksheet 3).

The lowest cost Bidder receives 30 points, and all other Bidders are evaluated relative to the lowest Bidder's cost. The formula for the evaluation of other Bidders cost will be (Lowest Cost Bidder/Bidder Cost) x 30.

The Financial Evaluation will be conducted by the ITS Procurement and Contracts Support Unit, concurrent with and independent from the Technical Preferred Evaluation – Written Proposal, which will be performed by the Technical Preferred Written Proposal Evaluation Team.

7.5 TECHNICAL PREFERRED EVALUATION - WRITTEN PROPOSAL

The Technical Preferred Evaluation of the written proposal will consist of an evaluation of the Bidder's Technical Proposal written response to all of the elements described in Section 6.2.1 of the RFP.

The Technical Preferred Evaluation will be conducted by the Technical Preferred Written Proposal Evaluation Team, concurrent with and independent from the Financial Evaluation, which will be performed by the ITS Procurement and Contracts Support Unit.

7.6 SUBTOTAL OF COMBINED EVALUATION SCORE

Bidder's scores from the Technical Preferred Evaluation of the Written Proposal and the Financial Evaluation will be subtotaled to produce a combined score. The proposals will be ranked based on the combined scores.

7.7 TECHNICAL PREFERRED EVALUATION – ORAL VENDOR PRESENTATIONS

Bidders susceptible to award will be invited to participate in an Oral Vendor Presentation, as further described below. All Key Personnel are strongly encouraged to attend and present. Questions to be asked of the Bidder's team may include background, relevant experience, and situational business related questions. The State will set the agendas and will use this process to clarify the Bidders' Proposals.

Bidder staff in attendance must fully understand the Proposal submitted, be able to address ITS concerns and comments, and be able to provide additional information regarding the original information provided within the Bidder's Proposal.

The format of the oral presentation will be provided to Bidders prior to the presentation. Presentation will be no longer 3 hours. The Bidder will be expected to provide a demonstration of how the proposed services address the RFP requirements and NYS needs. The oral presentation will be evaluated and scored.

Oral presentations will be held in the Albany, New York area.

The Technical Preferred Vendor Presentation Evaluation will be conducted by the Technical Preferred Vendor Presentation Evaluation Team.

7.8 SUBTOTAL OF COMBINED EVALUATION SCORE

Bidder's scores from the Technical Preferred Evaluation of the Written Proposal, the Financial Evaluation and the Vendor Presentations will be subtotaled to produce a combined score. The proposals will be ranked based on the combined scores.

7.9 TECHNICAL PREFERRED EVALUATION - SITE EVALUATION

ITS will conduct only one (1) service desk site visit and one (1) monitoring site visit (if the monitoring site is different than the service desk site) for each Bidder that is susceptible to award based on aggregated scoring after the Oral Vendor Presentation. ITS will not conduct a subsequent site evaluation at an alternate site.

The site identified by the Bidder must be a facility within the continental US that is representative of the type of facility or facilities that Bidder proposes to use to perform the work of the scale and scope required by this RFP. The Bidder must provide its location information and other information related to the facility on the Site Visit Facility Information Form with its bid response.

During the site visit, evaluators plan to observe the Bidder's capability to meet the requirements such as:

- observe live calls being taken,
- observe agent use of tools, and
- independently interview all levels of staff involved.

The Technical Preferred Site Evaluation will consist of an evaluation of the Bidder's Technical Proposal response to all of the elements described in Section 6.2.1 of the RFP. The Technical Preferred Site Evaluation will be conducted by the Technical Preferred Site Evaluation Team.

7.10 TOTAL OF COMBINED EVALUATION SCORE

Bidder's scores from the Technical Preferred Evaluation of the Written Proposal, the Financial Evaluation, the Vendor Presentations and the Site Evaluations will be totaled to produce a combined score. The proposals will be ranked based on the combined scores. The Bidder with the highest score will be the winner of a tentative award subject to successful contract negotiations and Attorney General and Office of the State Comptroller approval.

In the case of Bidders with the same total score, price shall be the basis for determining the award. When price and other factors are found to be substantially equivalent, the determination of the NYS Chief Information Officer (CIO) to award a contract to one of such Bidders will be final.

The approved bid award(s) between the State and the successful Bidder will not be binding until it has been approved in accordance with New York State's contract approval process.

SECTION 8 - TERMS AND CONDITIONS

The Procurement, the Bidder's Proposal, and the contract award that results from this Procurement are subject to and incorporate the following terms and conditions. Additionally, the agreement that results from the Procurement ("Contract") between ITS and the Successful Bidder ("Contractor"), collectively referred to herein as the Parties, shall substantially contain the terms and conditions set forth in this Section of the RFP.

8.1 CONTRACT TERM

The term of the Contract shall be for 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").

8.2 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.

8.3 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 the OSC before becoming effective. The Parties recognize that the Contract is wholly executory until approved by the Comptroller.

8.4 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 All NYS Contracts
- Any Amendments to the Contract
- The Contract and Clarifying Documents, if any (i.e., writings setting forth the final agreements, clarifications, terms, statement of work, and/or modifications to the RFP)
- ITS Request for Proposal No. C000382
- Appendix B – NYS General Specifications
- 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. All statements made by the State shall be deemed to be representations and not warranties.

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

8.5 ITS RESPONSIBILITIES

ITS will designate an ITS employee to oversee the implementation of the contract resulting from this RFP.

8.6 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 Proposal 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 Proposal; 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 Proposal 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.

8.7 INDEPENDENT CONTRACTOR

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

8.8 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 Proposal, whichever is higher, and must comply with all security and administrative requirements of ITS. ITS reserves the right to conduct a security background check, including fingerprinting, or otherwise approve any employee or agent furnished by Contractor or its subcontractors AT Contractor's sole expense. 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.

8.9 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).

8.10 SUBCONTRACTORS

Contractor may subcontract tasks or responsibilities related to providing the Services to subcontractors selected by Contractor subject to ITS's prior written approval. A subcontractor shall be defined as any firm engaged or assigned by the Contractor to perform work under the Contract, or any person so engaged or

assigned who is not an employee of the Contractor. 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 related to the Contract, 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 subcontractor agreement shall create any contractual relation between any 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, or other inquiry related to the Procurement or the resulting Contract or any litigation relating thereto

Contractor shall be fully responsible to ITS for the acts and omissions of, and the performance of Services under, the Contract including those portions performed by its subcontractors, and shall not in any way be relieved of any responsibility or liability under the Contract, notwithstanding any terms of its agreement with any subcontractor.

8.11 COOPERATION WITH THIRD PARTIES

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.

8.12 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.

8.13 TASK ORDERS FOR EMERGENCY SITE SUPPORT

Task Orders will be used when Emergency Site Support services are required from the Contractor. ITS designees authorized to initiate emergency work task orders will be defined and maintained by ITS in a designated document. Prior authorization is required, the State shall not reimburse the Contractor for Emergency Site Support services provided without prior authorization. NYS State reserves the right to issue emergency task orders by phone when necessary, with written follow-up when time allows.

The rates billed for Emergency Site Support must be the same as the Contractor's rates submitted in its Cost Proposal. The chargeable period for services will begin when the Contractor staff arrives on site and will end when the Contractor staff completes the task, leaves the site, or is dismissed by the designated site contact or other authorized ITS staff member, whichever comes first.

The Task Order will include, but not be limited to:

- Task Order Number
- Description of the problem to be resolved
- The name, phone number, and email of the NY State authorized designee making the request
- The date and time of the request
- The date and time that the Contractor staff is expected to arrive on site
- The full address of the Emergency Operations Site

- The name or title, phone number, and email of the site contact person(s) who will direct the Contractor staff while on site and determine when Contractor services are no longer needed
- An estimate of the duration of the staffing need if available
- The actual arrival and departure dates and times of the Contractor staff (when available)

The exact form and method of task order issuance will be defined during the initial contract Start-Up phase.

8.14 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.

8.15 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.

8.16 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.

8.17 PRICING, BILLING, AND PAYMENT FOR SERVICES

Payments for Services rendered shall be based on the rates set forth in the Contract's Financial Proposal.

Payment for End User Support Services will begin on the day following the acceptance of services as described in the ITS approved Start-Up Plan.

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.

8.18 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, by e-mail at 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.

8.19 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 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 MERCHANTIBILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.20 INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither Party shall be liable for any delay or failure in performance resulting from a Force Majeure Event, as defined in the RFP. 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 is 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.

8.21 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/subgrants 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 subrecipients 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 gency.

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 subgrants 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 Nonprocurement 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], 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.

k. Contractor shall ensure that the contract provisions specified in 45 CFR 74.48 are included in all subcontracts.

8.22 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.

8.23 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.

B. 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.

C. 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.

D. 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 Proposal 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.

E. Termination Notice

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

F. 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.

G. 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.

8.24 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.

8.25 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.

8.26 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.

8.27 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.

8.28 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.

8.29 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.

8.30 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.

8.30.1 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);
- 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).
- 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.

8.31 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 of 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.

8.32 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.

8.33 SECURITY, NON-DISCLOSURE/CONFIDENTIALITY & PRESS RELEASES

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

- **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. ITS may, at its sole discretion, require any Contractor employee or subcontractor to execute a confidentiality agreement comparable to Attachment 12. 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.

Upon the request of the State, employees of the Contractor and its subcontractors shall execute ITS's non disclosure agreement, either before or upon arrival at the work site or if in the sole discretion of ITS the employee(s) will otherwise have access to critical State facilities, networks, equipment, data or infrastructure. This requirement shall not apply to employees of the Contractor who are represented by an organization pursuant to a collective bargaining agreement with Contractor provided, however, that Contractor will advise such employees that they are to conduct themselves consistently with the non disclosure agreement.

- **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**

  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 regulations regarding private and sensitive data such as requirements that data be stored and accessed only within the continental United States.

  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 Contactor 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.

.

8.34 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 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises ("MBE") participation and 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.

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 or proposal, 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 or proposal. 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 the NYS Office of Information and Technology Services, Procurement & Contracts Support Unit, 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 or proposal.

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 or proposal 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 Attachment 21- Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement (Form # 4) to ITS with their bid or proposal.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Form #EEO100 located at: http://www.ogs.ny.gov/mwbe/forms.asp) 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 (Appendix P); (2) MWBE 102, Quarterly MWBE Compliance Report (Appendix Q).

8.35 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.

8.36 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.

8.37 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.

8.38 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.

8.39 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.

8.40 FEDERAL FUNDING

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

8.41 COMPLIANCE WITH NYS SECURITY POLICIES AND STANDARDS

Contractor must comply with State security policies and procedures, 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

8.42 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.

8.43 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.

8.44 PROPOSED COST SAVINGS OPPORTUNITIES

During the life of the contract, Contractor may propose additional cost savings opportunities that require action by ITS or by ITS and the Contractor. If, in the state's sole discretion, ITS opts to implement one or more proposed cost savings opportunities, ITS and Contractor will share proportionately in the savings, as negotiated. The methodology by which savings will be measured and the proportion of ITS and Contractor savings will be negotiated at the time of the proposal. Any such proposals will be handled via the Process for Change Orders in Section 5.31 of the RFP.

APPENDICES

Appendix A – Standard Clauses for New York State Contracts

Appendix B – ITS General Specifications

Appendix C – Example of Service Level Credits, Unrelieved Service Level Credits, and maximum At Risk Amount

Appendix D – Criminal Justice Information Services (CJIS) Security Policy

Appendix D2 – CJIS Security Requirements and Certification

Appendix E – ITS Bid Protest Policy

Appendix F – Glossary

Appendix G – Not used in this RFP

Appendix H – Role Description

Appendix I – Priority Sites

Appendix J – Site Inventory by County

Appendix K – Port Inventory

Appendix L – Opened Incident History

Appendix M – ITS Sites Served by Region

Appendix N – Change Order Form

Appendix O – Average Age of PCs

Appendix P - EEO 101, Workforce Employment Utilization/Diversity Compliance Report

Appendix Q - MWBE 102, Quarterly MWBE Compliance Report

Appendix R – Example Alert Monitoring Notes

Appendix S – High Level Process Overview

Appendix T – Estimated Volumes

Appendix U – Current ITS ServiceNow Implementation

Appendix V – Supported Agencies and Staff Count

Appendix W – Deliverable Acceptance Form

Appendix X – Milestone Deliverables

ATTACHMENTS

Attachment 1 - Proposal Checklist

Attachment 1A – Intent to Bid

Attachment 1B - Pre-Bid Conference Registration Form

Attachment 2- Inquiries Template

Attachment 3 - Vendor Responsibility Questionnaire

Attachment 4 - NYS Required Certification

Attachment 5 - Encouraging Use of NYS Business in Contract Performance

Attachment 6 - Contractor Certification to Covered Agency ST-220-CA

Attachment 7 - Bidder Firm Information Form

Attachment 8 - Financial Proposal

Attachment 9 - Equal Employment Opportunity Staffing Plan – EEO 100

Attachment 10 – Minority/Women Owned Business Utilization Plan – MWBE-100

Attachment 11 – Workers' Compensation and Disability Insurance Requirements

Attachment 12 – Consultant Confidentiality and Non-Disclosure Agreement

Attachment 13 – Firm Offer Letter and Conflict of Interest Disclosure

Attachment 14 – Not Used in this RFP

Attachment 15 - Lobbying Forms

Attachment 16 – Not Used in this RFP

Attachment 17 – Mandatory Bidder's Eligibility Qualifications Form

Attachment 18 –Technical Proposal

Attachment 19 – Requirements Verification and Traceability Matrix

Attachment 20 – Extraneous Terms Template

Attachment 21- Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement (Form # 4)