



ANDREW M. CUOMO Governor

MARGARET MILLER Chief Information Officer

Solicitation

VENDOR SUBMISSION MAY BE SENT TO THE ABOVE ADDRESS ONLY (E-Mail or Facsimile Submissions Are NOT Acceptable)

Table with 2 columns: Solicitation Opening Date/Time and Title; Solicitation Number and Specification Reference; Contract Period.

DESIGNATED CONTACTS section listing Warren Joscelyn, T.J. Kennedy, Elaine Blanchet, contact email, website URL, and bid monitoring information.

The Vendor Submission must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Solicitation, Appendix A (Standard Clauses for New York State Contracts) and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Vendor affirms that it understands and agrees to comply with the Office of General Services (OGS) procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at: Procurement Lobbying: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

Vendor information form with fields for: Vendor's Federal Tax Identification Number, NYS Vendor Identification Number, Legal Business Name of Company, D/B/A - Doing Business As (if applicable), Street, City, State, County, Zip Code, checkboxes for business types, and signature fields.

RETURN THIS PAGE AS PART OF VENDOR SUBMISSION OR NO BID SUBMISSION

ACKNOWLEDGEMENT FORM

VENDOR

Company Name

NYS Vendor Identification Number:

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts) and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Vendor affirms that it understands and agrees to comply with the ITS procedures relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

STATE OF _____ }
 COUNTY OF _____ } **SS.:**

On the _____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____, and further that:

[Check One]

- If an individual):** he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation):** he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership):** he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company):** he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No.

RETURN THIS PAGE AS PART OF VENDOR BID SUBMISSION

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SECTION 1 - **PURPOSE**

1.01 PURPOSE OF THIS REQUEST FOR PROPOSAL (RFP)

This RFP will result in a Contract between New York State Office of Information Technology Services (“ITS”) and the successful Bidder (the terms “successful Bidder” and “Contractor” are used interchangeably throughout this document and accompanying documents) selected through the RFP procurement process. The resulting Contract will be referred to as the “Contract”. The Contract will be managed by the New York State Office of Information Technology Services (ITS) for the benefit of the New York State Department of Civil Services (DCS).

ITS is leading a massive effort to transform Human Resource Management Systems (HRMS) and processes throughout NYS. Several concurrent projects are underway that will lead to the objective of this RFP. The implementation of Oracle Peoplesoft HCM, talent acquisition and talent management solutions are the primary ongoing implementations. This procurement is expected to identify solutions that will align with these projects.

The procurement seeks a replacement for the legacy testing and scoring systems currently used by the New York State Department of Civil Service (DCS) to support the examination services program provided to State and local government entities. The resulting system will be a component of the Exam System Modernization project with the capability to provide tests online.

To manage the examination processes, the DCS currently uses a multitude of different decades old applications and tools developed in various technologies (e.g. MAPPER, COBOL, etc.), many of which will not be supportable in the near future. A pictorial representation is set forth in Section 1.05, Current System. This disparate environment makes it difficult to support existing technologies and provide agencies with timely examinations in an efficient manner. DCS plans to modernize its testing and examination processes through more creative and innovative testing methodologies to provide State and local jurisdictions with eligible individuals to fill competitive positions. A new testing system is critical to meet this goal.

To replace a portion of the examination services processes and systems, the new Test Management System (TMS) will provide a modern, secure, technical environment in which the DCS can provide merit-based employee selection services.

This RFP solicits Bids from qualified Bidders with prior successful experience in replacing an older testing and scoring system with a new integrated ‘on premise’ TMS. The State seeks to use COTS Products and services, with limited Customization which will run at the ITS Data Center. The TMS solution must allow DCS to provide timely, innovative, high-quality, and cost-effective testing services to State and local government. It is expected that the TMS will accomplish this goal by integrating and automating processes and data, and by delivering information and services over the web.

It is envisioned that the new TMS will be highly configurable with robust features that enable a flexible, collaborative, secure working environment with automated workflows. The TMS must be flexible enough to accommodate future growth and changing business needs.

In addition, strong reporting functionality is required for internal and external communications. The winning Bidder will be required to convert existing test data and will be responsible for installation and implementation of the new TMS, all without interruption of operations. The winning Bidder will also be required to provide expert knowledge transfer and high quality training to administrators and staff.

1.02 OBJECTIVE

The objective for this Project is to modernize the testing system including business process changes, in combination with new supporting technology, thus enabling the organization to operate more effectively in terms of current/ongoing service delivery. ITS, working with its DCS customer is undertaking the procurement for a TMS to: alleviate the risk associated with its current systems; provide State and local agencies with improved examination services; and position the DCS to develop and deliver modern, merit-based tests more efficiently using online testing capabilities.

ITS expects that the solution ultimately selected will:

- greatly reduce the risks associated with the current aging systems;
- replace existing systems;
- promote business process improvements and automate paper-based processes to reduce workload through automation;
- support the DCS business functions and satisfy the associated requirements;
- employ proven hardware and software technologies that supports online testing;
- ensure the integrity and security of all data in the system;
- be viable for the term of the Contract or a minimum ten year useful life, whichever is greater;
- interact with users of all types in an effective, manageable and user-friendly manner;
- be cost-effective to maintain and operate;
- provide a basis on which additional TMS functionality can be easily implemented;
- permit data currently resident in existing DCS systems to be migrated into and used by TMS;
- reduce examination processing times that enables DCS to continue to meet its objectives with limited resources through increased productivity and efficiencies;
- provide a more robust mechanism for accurately tracking, analyzing and reporting on data associated with exam administration; and
- provide DCS with the ability to migrate over a 5 year timeframe from the current pencil-and-paper testing to being able to hold 100% of their tests online.

1.03 DEFINITIONS

New York State uses terms very specifically in its business. It is critically important that a Bidder familiarize itself with the terminology as used in this solicitation. For convenience, selected definitions are set forth below. However, reading the Glossary is required to fully understand the business processes that are described in this procurement. Definitions for these and other terms in this document, its appendices and attachments, can be found in Appendix K – Glossary of Terms. Capitalized words can be found in Appendix K – Glossary of Terms.

The term “Bidder” is any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a “Contractor.”

For the purposes of this RFP, the term “ESM” shall be defined as the Exam System Modernization program and “TMS” shall be defined as a Test Management System. The term “User” shall be defined as a person with access specified in the TMS based on the role-based security.

For purposes of this RFP, the following terms shall be used interchangeably: Department, DCS, and Civil Service.

The term “User” shall be defined as a person with access specified in the TMS based on the role-based security. User types include:

- Candidates and Applicants: external users who sign up to participate in an examination or test (See Appendix K – Glossary of Terms)
- Civil Service Users: This includes those responsible for development, review, administration, scoring and reporting relative to tests.
- Non-Candidate Users are those who use the system to perform their job outside the Department of Civil Service. This includes state and local HR professionals, vendors, subject matter experts, test site workers.
- Administrator: Users who have the ability to perform administrative functionality within the software such as setting up users, defining roles, defining fields, etc.

The term “Computer Based Testing” shall be used interchangeably with “CBT,” “online testing,” and “web based testing.”

1.04 OVERVIEW

Examination Services Program in New York

DCS is the central human resource agency for the State of New York, and is responsible for administering the provisions of New York State Civil Service Law. The State’s Constitution mandates that appointments and

promotions into civil service be made according to merit and fitness as ascertained by competitive examination. DCS is statutorily required to provide examination services to State agencies and local jurisdictions for competitive class positions. In the State service, the competitive class comprises over 80% of the classified workforce of approximately 120,000 employees in approximately 3,600 titles. Currently, over 95 local jurisdictions in all regions of the State receive examination services from DCS. Each State agency and local jurisdiction acts as its own appointing authority, responsible for processing appointments, based on the Rosters and Eligible Lists provided to them by the DCS.

The full suite of examination services provided by DCS is currently supported through many different applications and tools developed in various technologies, including but not limited to Unisys MAPPER, ColdFusion, COBOL, Visual Basic, Flat\Indexed files, and Oracle databases. This disparate environment makes it difficult to support and manage the testing and examination process. The Examination System Modernization (ESM) project initiated by the DCS addresses the full scope of examination service processes. The State is implementing the ESM by updating the supporting technologies for test development and administration, interfacing with exam and application/Candidate data, and delivering online testing. **The purpose of this RFP is to provide new Test Development and Test Administration functions, collectively referred to as the Test Management System (TMS).** This system must support the capacity and capabilities to provide online testing services.

For the purpose of aiding Bidder understanding of the State's examination and applicant process, a full high-level process flow diagram and detailed Use Cases can be found in Appendix B – Use Cases. **The essential scope of this RFP includes Test Development, Test Scoring and Analysis, and Examination and Candidate Scheduling.**

1. Test Development
 - Use Case 12 *Create Test Item*
 - Use Case 13 *Manage Test Item*
 - Use Case 14 *Create Test*
 - Use Case 15 *Prepare Examination*
 - Use Case 16 *Deliver Examination*
2. Test Scoring and Analysis
 - Use Case 17 *Score Test*
 - Use Case 18 *Analyze Test Scoring*
3. Examination and Candidate Scheduling
 - Use Case 5 – *Candidate Examination Scheduling*
 - Use Case 7 – *Create and Modify Site Profile*
 - Use Case 8 – *Manage Examination Locations*
 - Use Case 10 – *Schedule Examinations*
 - Use Case 11 – *Assign Examination Staff*

Historic Volume

During the last five years, DCS has provided testing services to over 750,000 state and local Candidates that participated in over 20,000 examinations. The volume of examinations is expected to remain consistent with past trends. See Appendix B – Use Cases for future volume information.

Exams	State			Local		Totals	
	Exams Held	Applicants	Candidates Tested	Exams Held	Candidates Tested	Total Exams Held	Total Candidates Tested
2015	861	105,867	70,054	4,222	69,034	5,083	139,088
2014	608	112,383	83,225	3,850	57,387	4,458	169,770
2013	533	90,992	60,534	2,847	66,038	3,380	157,030
2012	496	59,910	38,962	3,423	68,873	3,919	128,783
2011	575	105,371	71,409	3,589	67,161	4,164	172,532
Total	3,073	474,523	324,184	17,931	328,493	21,004	767,203

Issuing Office and Involved State Agencies

This RFP is issued by ITS. ITS is responsible for administering the RFP process and leading the Proposal evaluation process, as well as executing and administering the Contract resulting from this RFP and performing technical, conversion and integration support. ITS, and the winning Bidder for this RFP, shall respectively individually be known as a "Party" to the aforesaid Contract, and collectively as the "Parties" thereto. The TMS solution is being acquired for use by the DCS to provide examination services to State agencies and local governments.

The DCS project team is comprised of the following Department divisions, with brief descriptions included:

The Office of Commission Operations and Municipal Assistance Division (OCOMA) provides technical advice, guidance, and direct services to 95 local civil service agencies in classifying positions, interpreting State civil service laws and rules and, together with the Testing Services Division, provides selection devices and examinations.

The Staffing Services Division (SSD) provides State agencies with personnel recruitment and placement services. SSD coordinates the Department's response to Department personnel operations and develops and administers a variety of tests for State positions, including oral, training and experience, and performance assessment tests.

The Testing Services Division (TSD) develops, administers and validates State and local written tests. This includes creating and managing test content, formatting and printing test booklets, siting and scheduling Candidates, and analyzing test results.

Brief description of ITS follows:

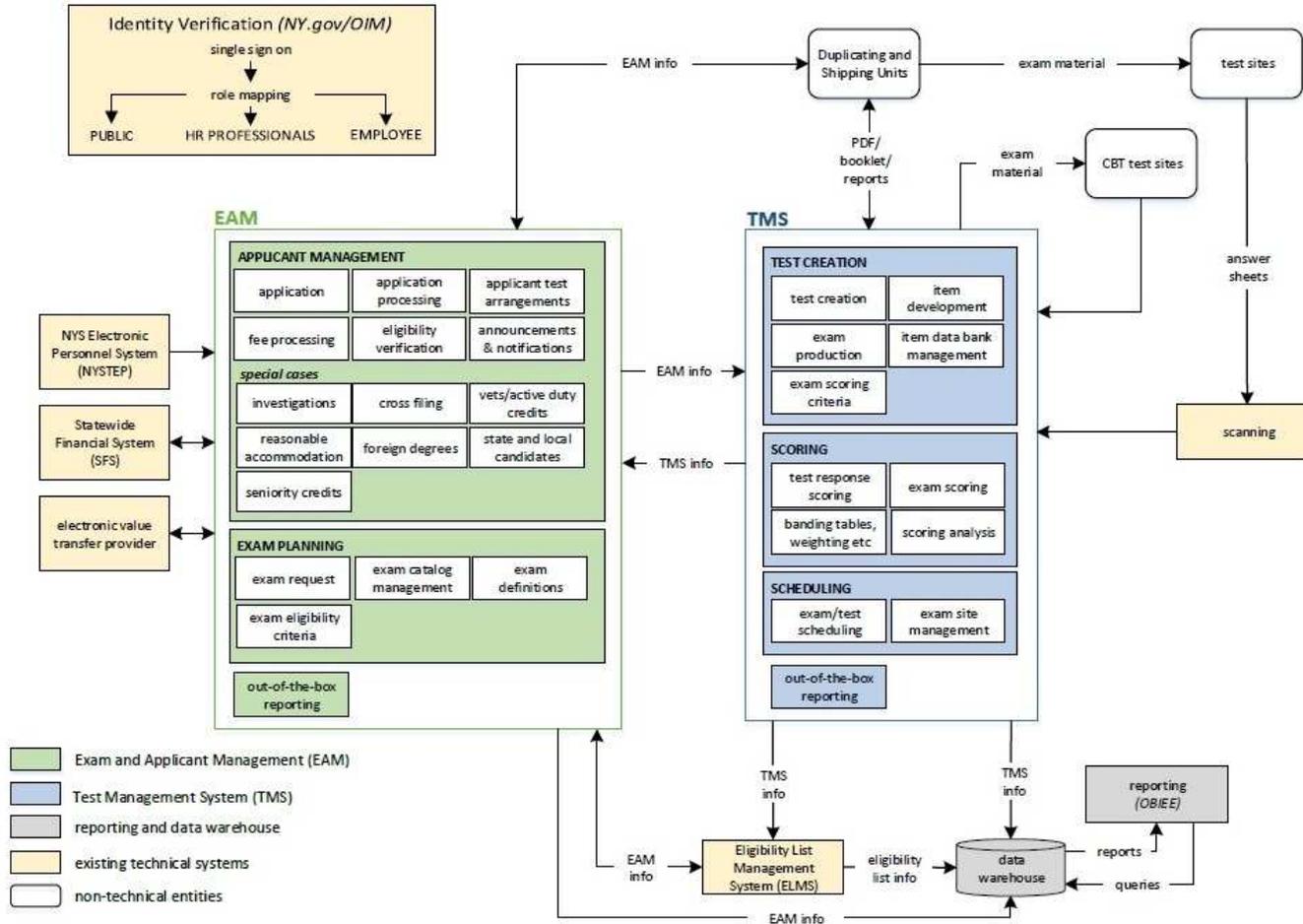
The ITS mission is to establish the strategic technology direction for the State of New York, through innovative information technology (IT) solutions and services, to enable New York State government to improve the lives of citizens, foster economic development, and welcome visitors to our State.

In the fall of 2012, ITS was created to consolidate IT service delivery to New York State agencies; creating a single agency of more than 4,000 professionals to handle the delivery of the full range of IT services for NYS executive agencies. With this landmark IT Transformation initiative, the State hopes to achieve enhanced IT capabilities to improve government services and enable it to build an IT environment that: maximizes existing resource; meets agency business needs with world class-customer services; creates a talented, innovative IT workforce; increases accountability; and provides cost savings for the State.

As part of the State's IT Transformation process, IT customer agencies are grouped into clusters. A cluster is a grouping of agencies that have similar challenges, customers, data, business processes, and common IT needs. DCS is part of the Administrative and General Services Cluster, which is responsible for all of the HRMS transformation projects.

1.06 THE FUTURE STATE

The following high-level functional diagram envisions the future state of the DCS examination system. Bidders will find descriptions of the entities and systems, delineated below, in Appendix G– Future State. In addition, the Bidder will find a diagram, and accompanying descriptions, for the existing systems with which the TMS will need to interface in Appendix H – Interfaces.



1.07 BIDDER MINIMUM QUALIFICATIONS

The State has established the following minimum qualifications to ensure that only qualified and reliable Bidders be considered for Contract award. A Bidder submitting a Proposal shall have the burden of demonstrating to the State's satisfaction that it meets the qualifications and can perform the work in order to be considered for Contract award. (Please use Attachment 9 – Attestation of Minimum Qualifications to provide this information.)

1. The Bidder represents and warrants that it has maintained an organization capable of performing the work specified in this RFP, in continuous operation for at least the past five (5) years.

(Note: If Bidder is relying on operations of a parent company, subsidiary, predecessor entity, or other entity for purposes of satisfying this requirement, Bidder is required to provide a full explanation describing such relationship and how it satisfies this requirement. The State will determine whether such other entity experience satisfies this requirement, and reserves the right to ask for additional information or require a Contract performance guarantee and/or other assurances from such other entity(ies) or the Bidder).

2. The Bidder represents and warrants that it possesses adequate staffing resources, financial resources and organization to perform the type, magnitude and quality of work specified herein this RFP.
3. The Bidder represents and warrants that it offers a Commercial off-the-shelf (COTS) TMS which will form the basis for meeting the business and operational requirements as set forth herein this RFP.
4. The Bidder represents and warrants that it has all title, interest and rights to the TMS and underlying source code (except open source) or that it is otherwise legally authorized to directly license, sub-license, create derivative works, escrow, publicly display and perform, distribute and modify the proposed Product(s).
5. The Bidder has successfully implemented at least three (3) projects of similar scope as that required by this RFP. These implementations must have systems up and running. The Contractor must have performed the work as the prime Contractor, or as a Subcontractor with responsibility for delivering the services described in this RFP.
6. Bidder, at time of Bid submission and throughout the term of the Contract, must be authorized to conduct business in New York State, or have filed an application for authority to do business in New York State with the New York State Secretary of State at time of Bid submission. Such application must have been approved prior to Contract Award. (For details concerning this requirement, refer to information available at <http://www.dos.ny.gov/corps/index.html> and http://www.dos.ny.gov/cnsl/do_bus.html To register with the Secretary of State, contact: <http://www.dos.ny.gov/corps/contact.html> The Contractor must notify the State immediately in the event that there is any change in the above corporate status.

SECTION 2 - ADMINISTRATIVE PROTOCOL AND PROCESS

2.01 DESIGNATED CONTACTS

In compliance with the Procurement Lobbying Law, Warren Joscelyn, ITS – Procurement and Contract Support, has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email for all questions regarding this solicitation.

Warren Joscelyn
Office of Information Technology Services
Finance – Procurement and Contract Support
Swan Street Building, Core 4, Floor 2
Albany, New York 12223
Email: its.sm.ITS_BIDS@its.ny.gov

In the event the primary designated contact is not available, the SECONDARY Designated Contact is:

T.J. Kennedy
Office of Information Technology Services
Finance – Procurement and Contract Support
Swan Street Building, Core 4, Floor 2
Albany, New York 12223
Email: its.sm.ITS_BIDS@its.ny.gov

In the event the primary and secondary designated contacts are unavailable, the TERTIARY Designated Contact is:

Elaine Blanchet
Office of Information Technology Services
Finance – Procurement and Contract Support
Swan Street Building, Core 4, Floor 2
Albany, New York 12223
Email: its.sm.ITS_BIDS@its.ny.gov

2.02 RFP QUESTIONS

New York State Finance Law §§139-j and 139-k imposes certain restrictions on communication between NYS and Bidders during a procurement. Bidders must submit all RFP inquiries, questions, or comments to its.sm.ITS_BIDS@its.ny.gov using the Bidder Questions Form (Attachment 4) by the due date indicated on the Calendar of Events. **No other method of inquires will be accepted.**

Additional information is available at: <http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html>

2.03 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

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

2.04 KEY EVENTS AND DATES

The schedule for this RFP is indicated below. ITS reserves the right to change any of the dates stated in this RFP.

<u>Event</u>	<u>Date</u>	<u>Time</u>
Request for Proposals Release	Tuesday, November 1, 2016	N/A
Mandatory Pre-Bid Conference Registration	Monday, November 28, 2016	N/A
Mandatory Pre-Bid Conference	Wednesday, November 30, 2016	TBD
Deadline for Question Submission	Wednesday, December 7, 2016	4:00 PM EST
Issuance of Response to all Post-Conference Questions Received	Wednesday, December 21, 2016	N/A
Bid Submission Deadline	Monday, January 9, 2017	4:00 PM EST
Initial scoring for demonstration eligibility completed	Thursday, January 26, 2017	N/A
Bidder Demonstration Invite Sent (Only Bidders Susceptible for Award)	Friday, February 3, 2017	N/A
Bidder Demonstrations	Week of Monday, February 13, 2017	N/A
Anticipated Notification of Tentative Award	Friday, March 3, 2017	N/A
Contract Execution	Friday, March 17, 2017	N/A
Project Start-Up Date - Contract begins upon OSC approval (Refer to section 2.5)	Thursday, June 15, 2017	N/A

2.05 MANDATORY PRE-BID CONFERENCE

Participation in the Pre-Bid Conference is mandatory; all Bidders must attend. A Bidder must register online for the Pre-Bid Conference by sending an email to its.sm.ITS_BIDS@its.ny.gov. Please indicate the names of the people who will be in attendance.

The Pre-Bid Conference will be held in Albany, New York at the Empire State Plaza. The room location and time will be provided to the registered Bidders prior to the conference. Each interested Bidder is requested to limit the number of representatives attending the Pre-Bid Conference to five (5). The conference will primarily focus on the complexities and challenges of test development, scoring and delivery including much of the essential functionality required. It is suggested that Bidders include a technical lead and business analyst as representatives. In addition, the conference will include a walk through of the proposal requirements. Any individuals arriving later than 15 minutes after the start time of a Pre-Bid Conference will not be admitted. If this results in a Prospective Bidder not having a representative at the Pre-Bid Conference, that Prospective Bidder will be disqualified from further participation in this procurement.

Questions may be permitted and may be answered verbally at the Pre-Bid Conference, all verbal answers are unofficial. Answers to all questions posed at a Pre-Bid Conference will be included in the written response to Bidder questions and will be posted on the ITS website listed on the face page of this RFP. Only those answers provided in writing are official. All subsequent questions/inquiries must then be submitted in writing by sending an email to its.sm.ITS_BIDS@its.ny.gov by the closing dates listed in Section 2.03 - Key Events and Dates.

At the discretion of ITS, materials may be posted to the ITS website for viewing or provided prior to the Pre-Bid Conference to Prospective Bidders using the e-mail address(es) submitted with registration.

2.06 BIDDER DEMONSTRATION

Upon notice by the State, Bidders susceptible to an award (see Sections 4.03.4 and 4.03.5, Evaluation Process) will be required to demonstrate their solution at a designated State location, date and time. The purpose of this demonstration is to impart an understanding of how specific services will be provided, to substantiate the information contained in the Bidder's Proposal, and for the Bidder to further explain and demonstrate its proposed solution, experience and capabilities. After the Bidder Demonstration presentation packages are sent out, the Bidders will be provided a specified time period to ask additional questions regarding the Bidder Demonstration requirements. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document, which will be posted on the ITS website.

SECTION 3 - SCOPE OF WORK

3.01 INTRODUCTION

This RFP is a component of the larger HRMS vision, which is expected to transform the State's workforce planning capabilities. A modern examination services program at DCS is a key outcome of the HRMS vision.

Through this procurement NYS seeks to acquire an industry leading TMS package and support. The successful Bidder must have an organization capable of supporting this Product throughout the term of the Contract. The State's intent is to make use of the standard functionality within a COTS software TMS solution to the maximum degree possible. The on-premise TMS must fit into the overall infrastructure and architecture of NYS systems and provide a scalable design to allow for future growth.

Under the resulting Contract, the selected Bidder must provide the following services/functions:

1. Project Planning and Project Management
2. Application Strategy, Architecture, and Planning
3. Detailed Requirements Definition
4. Design Specifications
5. Configuration/Programming/Development/Integration
6. System Testing and Acceptance Testing
7. Product Implementation and Deployment
8. Communications
9. Training and Change Management
10. Knowledge Transfer
11. Post-Implementation Maintenance and Support

3.02 MILESTONE DELIVERABLES

Payments will be made based on acceptance of proposed milestone deliverables in Attachment 3, as defined in Appendix O – Milestone Deliverable Descriptions.

3.02.1 Deliverable Payment Schedule

A payment schedule for Bidder Proposed Fixed Price (as proposed by the winning Bidder's response to Attachment 3) will be negotiated on Contract award and must conform to the following principles:

- 1) Up to seventy (70) percent of the deliverable component (see Milestone Deliverable Itemization tab of Attachment 3) of the fixed purchase price must be payable to the Prime Contractor upon ITS acceptance of clearly defined and measurable deliverables to ITS prior to system Go-Live.
- 2) Fifteen (15) percent of the fixed purchase price payable to the Prime Contractor upon Go-Live.
- 3) The remaining fifteen (15) percent of the fixed purchase price is payable to the Prime Contractor once all system defects have been repaired to the satisfaction of ITS and, in no event, would be payable to the Prime Contractor prior to completion of the 180 Post Go-Live period.
- 4) Additions to the financial Proposal milestone deliverable schedule are acceptable, as long as the total percentage for each phase of the project plan is adhered to. Deletions or changes to the deliverables as outlined in Attachment 3 Financial Proposal may be submitted via the Extraneous Terms and Conditions process outlined in Section 6.49.13 using Attachment 14 – Proposed Extraneous Terms.
- 5) ITS will only make payment upon the signed acceptance of each deliverable by an authorized ITS representative (See Appendix N –Deliverable Acceptance Form and RFP Section 6.48).
- 6) There must be a direct correlation between the deliverables submitted in the Bidder's project schedule and the negotiated deliverable payment schedule.

3.03 GOVERNANCE STRUCTURE

A Governance committee, led by ITS, is established for this project, comprised of executive sponsors for ITS and DCS. All deliverables and change requests must be signed off by the ITS project manager after receiving internal approvals by the executive sponsors.

3.04 FUNCTIONAL SCOPE

DCS provides examination services to State and local government entities. The Department develops and administers tests on a wide variety of subjects for job titles in a myriad of occupational areas. The volume and variety of work has led to the development of many processes that enable efficiencies for mass production. The functional requirements identify the “what”, but just as importantly in your responses is the “how”.

The functional requirements for this RFP include test content development, test production, packaging and delivery, test scoring and analysis, Candidate and examination scheduling as well as site management functional capabilities.

Requirements are defined in greater detail in the attached Use Cases. Below is a high level description of the functional requirements. More details for each of the areas may be found in Appendix B – Use Cases, and Attachment 2.01 Functional Requirements Matrix.

3.04.1 Create/Manage Test Item

The system must provide the tools and environment for test authors to create, edit, store, archive, and track many varieties of test questions. Staff must be able to add source information, links and attachments to test items. Items must be able to be classified, categorized, and tagged in a manner that enables strong security and robust searching capabilities. Data relative to test item performance must be available for reporting, tracking, searching and test selection inclusion. (See Use Cases 12 and 13)

3.04.2 Create/Manage Test

The system will enable authors to build Subtests and tests that may be administered using Paper and Pencil or via Computer. The State may simultaneously administer (at one time) hundreds of exams for slightly different job specifications that require similar but not duplicate tests. The ability to easily combine Subtests in a variety of combinations to create multiple tests is critical to the efficiency of the Department. This includes the ability to create tests that use some of the same Subtests and that can be presented efficiently in the same testing session. This requires the ability to present Candidates with each Subtest only once and then use the scores from those Subtests multiple times to compute multiple test scores for each Candidate. Each of these test scores is typically associated with a different examination. Authors must also be able to track and report on usage and performance of items, Subtests and tests. (See Use Case 14)

3.04.3 Prepare/Deliver Examination

Tests are one of the components of an examination (or exam) – an exam includes minimum qualifications, tests and other information relative to the merit and fitness of Candidates competing for a job. The ability to map tests to examinations quickly and efficiently is required. Often times, Candidates are sitting for more than one exam at a time and the instructional materials and organization of the examination packages is critical for successful administration on a large scale basis (i.e. 10,000 Candidates across the state on one day taking many different tests/exams). (See Use Cases 15 and 16) Also, as mentioned above, it is critical to be able to present a Candidate taking multiple exams (in the same testing session) with each Subtest only once and then use the scores from those Subtests multiple times to compute multiple test and exam scores. Maintaining security and limiting exposure of test materials is an important factor in how tests are prepared and delivered to Candidates.

3.04.4 Score/Analyze a Test

Due to the complex nature of the testing and examination process, a combination of automated and manual scoring is needed for both paper and pencil and online administered tests. Subtest scores must be able to be combined and weighted based on test definitions. Score banding/scaling is essential. Test analysis across populations, tests, exams and other variables must be available. Ad hoc and standardized reporting requirements are critical (See Use Cases 17 and 18).

3.04.5 Create and Modify Site Profiles/Manage Exam Locations/Assign Examination Staff

The State currently has a wide variety of test site locations, from rooms in the Empire State Plaza that accommodate thousands of test takers to public schools with many classrooms, each room holding less than 30 Candidates. There are currently limited locations available for online testing, but those facilities are expected to grow. All sites must be defined and identified for their capacity, capabilities and availability. Sites are opened for tests based on their availability and the size of the Candidate pool. Managing sites, rooms within the sites, and staff assigned to sites is both a centralized (managed by DCS staff) and decentralized function (managed by local agencies or Site Administrators). (See Use Cases 7, 8 and 11).

3.04.6 Schedule Examination/Candidates

Exam scheduling is done by DCS staff. Typically, examinations are bundled based on common test material, a common examination program, or other common factors and are scheduled as a group. Examinations can be scheduled for a single session or multiple sessions on a single or multiple days. Currently, Candidate scheduling is predominantly done by DCS staff. In some cases Candidates can schedule themselves and the State plans to expand this capability (See Use Cases 5 and 10)

3.04.7 Potentially Challenging Business Functions

The following information provides Bidders a brief insight into the uniqueness and complexity of the Department's examination program. The functions outlined below do not encompass all of the Department's business requirements but rather are illustrative of some of the unique challenges the Department faces in conducting its daily business. These functions are called out to provide further clarification opportunities for Bidders to ensure their understanding of the business need.

- Integrating Examination Definitions: Information created in one process is routinely relied upon and used in other processes. For example, once a test plan is defined, exam announcements are generated based on the definition of the examination. Similarly, the scoring parameters (a part of the exam definition) drive the scoring algorithms used in the execution of scoring.
- Delivering Tests Using a Variety of Media: At times, DCS delivers the same test using more than one delivery method; for example, paper booklets with scanned answer sheets in some locations and computers or web delivery in others. The responses collected with the varying delivery methods, however, need to be combined and processed together to arrive at a single set of scores.
- Creating Examination Series Containing Tests with Shared Content: Candidates sometimes participate in several related examinations on the same day. These examinations may share common test material; such examinations are presented together in what DCS calls "Examination Series". When Candidates participate in multiple examinations with shared test content, they respond to the common test material only once. Candidates' scores are calculated using their responses to the common test material as many times as needed. Candidates are given instructions on which questions they must answer for the examinations they are taking. (See Appendix C – Examination Series for a sample test question chart and examination listing.)

- Selective Certification: DCS optimizes the use of examination scores by allowing Candidates to indicate that they possess defined, job-related requirements needed for some positions being filled. The requirements could include specific education, experience or skill sets which have been identified by agencies as essential to perform the duties of a position. Selective Certification is a concept that enables DCS to filter previously tested Candidates when unique qualifications are needed for a specific position.. (See Attachment 2.10 for further details.)
- Holding Tests over Several Days: There are multiple reasons why a test may be held over several days. First, the quantity of written test material sometimes requires two or more days to administer. In such cases, once a Candidate's responses have been collected from all test sessions, they are combined and treated as a single test. Second, there may be so many Candidates that a test needs to be administered in several sessions held over several days. In order to maintain test security under the second circumstance, DCS may scramble the order in which Subtests are presented in the different sessions. The solution needs to be able to track, score, and report on each Subtest correctly, regardless of the order in which the Subtests were presented to Candidates.
- Granting access on a "need to know" basis: Access to data, processes and workflow deliveries is granted solely to the individuals or groups that require such for the completion of their job duties for a given work assignment. For example, a staff person may have the ability to define the minimum qualifications and the number of tests for a given examination but does not have access to the test questions or the answer keys. Similarly, a staff person may have the ability to add, delete, or modify some of the questions in a test, but is limited to read-only access for other test questions. Access granted to staff may change fairly frequently as work assignments may be of long or short duration.

SECTION 4 - METHOD OF AWARD, EVALUATION AND SCORING METHOD

4.01 METHOD OF AWARD

One award shall be made based on a determination of Best Value offered by a responsive and responsible Bidder. A Best Value award optimizes quality, cost and efficiency among responsive and responsible Bidders and is consistent with the best interests of the State of New York.

4.02 EVALUATION AND SCORING METHOD

Evaluations will consist of four (4) separate parts. Evaluation of: (1) an Administrative Proposal, (2) a written Technical Proposal and (3) a Financial Proposal and (4) a Bidder Demonstration. Each component will be evaluated separately and independently in accordance with the RFP as further described below. The relative weights of each part of the Proposal are as follows:

- Administrative Proposal: Pass/Fail
- Technical Proposal: 50% written Proposal, 20% Demonstration
- Financial Proposal: 30%

4.03 EVALUATION PROCESS

Below is an overview of the evaluation process. Refer to Section 5 for specific information regarding each part.

4.03.1 Administrative Proposal Evaluation:

- 1) In order to qualify to submit a Proposal in response to the RFP, a prospective Bidder must have attended the mandatory Pre-Bid Conference as described in Section 2.04 of the RFP. A Proposal submitted by a Bidder that did not attend the mandatory Pre-Bid conference must be rejected.
- 2) All Administrative Proposals will be reviewed to determine if they meet the Proposal submission requirements as outlined in Attachment 7 – Proposal Checklist Administrative Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of the State, may be rejected and disqualified from further consideration for award.
- 3) Each Bidder who passes the previous steps of the Administrative Evaluation shall proceed to the next step. This step is to assess if the Bidder provided the required evidence that it meets the mandatory minimum qualifications set forth in Section 1.07. Any Proposal not meeting the Bidder mandatory minimum requirements shall not be given further consideration. (Please see Attachment 9 – Attestation of Minimum Qualifications)

4.03.2 Technical Proposal Evaluation

All Bids passing the Administrative Proposal Evaluation will then move to the Technical Proposal Evaluation process. This evaluation focuses on the Bidder's capability, the architecture and system processes match, and functionality match to the State's requirements. Evaluation will include review of the answers to Bidder's Technical Proposal Attachments 2.01 -2.11. Technical Proposal evaluation process consists of the following steps:

- 1) Pass / Fail Evaluation of Mandatory Requirements: the technical evaluation team will inspect each Technical Proposal to determine if the Bidder has agreed to meet **ALL** of the Mandatory Requirements as prescribed in Attachment 2.01 Technical Proposal Functional Requirements Matrix. Failure to agree to meet **ALL** of the mandatory specifications set forth in the Technical Proposal Requirements must result in a Bidder's disqualification from further consideration. A Bidder who passes this step will proceed to the written technical proposal assessment.

- 2) **Written Technical Proposal Assessment:** This phase of the Technical evaluation will involve review and evaluation of the Bidder's Technical Proposal. The technical evaluation team will inspect all aspects of the Bidder's written Technical Proposal and apply the evaluation criteria developed and score accordingly. The Functional Requirements in Attachment 2.01 must be referenced in the written responses in Technical Proposals (Attachments 2.02-2.11) to help the evaluation team understand how each of the requirements will be met. Ambiguities will negatively impact Proposal scoring. The Technical Proposal evaluation is worth 50 points.

4.03.3 Financial Proposal Evaluation

The Attachment 3 - Financial Proposal workbook will be opened and reviewed for responsiveness to the financial requirements. Each responsive Proposal that meets the Financial Proposal requirements will be evaluated and receive a financial score. Evaluation will be based upon a comparative analysis of all Bidders life cycle costs, assuming a 10-year useful life, for software, implementation services, maintenance and support, and estimated optional services costs as calculated on Tab 2 of Attachment 3.

The Financial Proposal with the lowest financial cost will be given the maximum number of points (30 points). All other Proposals will receive a proportionate score to the Proposal with the lowest cost, according to the following calculation:

$$\text{Financial Score} = (30 \text{ points}) \times (\text{Lowest Financial Cost} / \text{Bidder's Financial Cost}).$$

Example	Bidder A	Bidder B	Bidder C
Proposed Price	1000	800	1200
Points awarded	24	30	20

4.03.4 Preliminary Calculation of Combined Technical and Financial Evaluation Score

Scoring from 4.03.2 Technical Proposal Evaluation and 4.03.3 Financial Proposal Evaluation will be subtotaled to determine Proposal susceptibility to award.

4.03.5 Bidder Demonstration

Bidders susceptible to award will be invited to participate in an Oral Bidder Presentation, as further described below. All Key Personnel are strongly encouraged to attend and present. Questions and demonstration requests may include background, relevant experience, and situational business related questions as well as demonstrations of how Bidder's solution would meet the business challenges described in the RFP. The State will set the agenda and will use this process to clarify and evaluate the Bidders' Proposals. Bidder staff in attendance must fully understand the Proposal submitted, be able to address concerns and comments, and be able to provide additional information regarding the original information provided within the Bidder's Proposal. Oral presentations will be held in the Albany, New York area.

- a. Each Bidder will be assigned a date for their demonstration.
- b. Each Bidder will be given the same specific scenarios by the State to demonstrate within an allotted time frame. For features that have not yet been built into the system, a mock up showing how the feature would look and operate is required from the Bidder.
- c. Each Bidder is responsible for bringing all electronic equipment necessary to execute its demonstration.

4.03.6 Final Calculation of Combined Technical and Financial Evaluation Score

All scoring will be tallied and the Bidder with the highest Combined Evaluation Score will be eligible for Contract award. In the case of Bidders with the same Combined Evaluation Score, the Bidder with the lowest financial score shall be eligible for Contract award.

SECTION 5 - PROPOSAL SUBMISSION REQUIREMENTS

5.01 ADMINISTRATIVE PROPOSAL REQUIREMENTS

A Bidder's Proposal must be submitted as three (3) separate parts: (1) Administrative Proposal, (2) Technical Proposal and (3) Financial Proposal.

After the Bid opening, each Proposal will be screened for completeness and conformance with the stated requirements for Bid submission as set forth herein. Any Bid not meeting these requirements may be deemed nonresponsive and may be denied further consideration for award.

A complete Administrative Proposal will consist of the items described in Attachment 7.

5.02 TECHNICAL PROPOSAL REQUIREMENTS

The information provided in this section describes aspects of the engagement that the vendor must perform. Each category requires the Bidder to submit a corresponding response document in accordance with instructions outlined in Attachments 2.01-2.11 (Response Documents).

5.02.1 Functional Requirements Matrix (Attachment 2.01)

The Bidder must submit a completed Functional Requirements Matrix worksheet. Bidders must indicate whether the Bidder's proposed solution will meet each of the mandatory and desirable requirements.

The requirements describe system functionality for use by State and Local employees. It does not describe specific services to be provided by the vendor to the Department. The requirements identify functionality that enables the outcomes described (the "what"), but not the process to achieve (not "how" the outcomes are delivered). The processes described are not considered mandatory; only the outcomes are mandatory.

Use Case references are identified to provide additional context for the requirements.

- Mandatory Requirements (M) – The Bidder must agree to meet all mandatory requirements prior to acceptance of implementation. This can be achieved by having the requirement already built into the solution; through Configuration, through Customization or via a partnership with another vendor.
- Desirable Requirements (D) – These requirements are considered very important to conducting examinations in New York State. The Bidder is encouraged, but not required, to agree to meet all these requirements.

5.02.2 Executive Summary (Attachment 2.02)

The Bidder must provide information not defined as required but deemed necessary to fully understand the Bidder's Company Experience and Staff Qualifications. The Bidder must submit a comprehensive Executive Summary that includes, but is not limited to the following: Organizational Overview should consist of a succinct statement outlining corporate/business history including a general mission statement, the overall number of employees per position, and other general information about the firm. The Bidder must demonstrate that it possesses adequate staffing resources, financial resources and organization to perform the type, magnitude and quality of work specified herein this RFP, and demonstrate that the Bidder has been in continuous operation for at least the past five (5) years. In addition, the Bidder must provide a statement of previous experience that qualifies the Bidder to provide the Project Services.

5.02.3 Project Planning (Attachment 2.03)

The Bidder must deliver a comprehensive Project Plan that clearly articulates a roadmap for success in implementing its solution as outlined in Attachment 2.03. The Project Plan allows each Bidder to clearly articulate its methodology(s) and processes for the delivery and deployment of the proposed Test Management System as well as proposed timeframes, staffing requirements and other management Proposals, (e.g., risk management and quality management).

5.02.4 Proposed Architecture (Attachment 2.04)

The Bidder must include a conceptual architecture diagram and description of the proposed architecture. The conceptual architecture must identify and describe the various hardware; software (COTS, Open-Source); database components; programming languages; development tools; documentation tools; and standards.

The Bidder should consider the following as it pertains to software licensing and license scope:

- If software is granted on a licensed basis, Bidders shall Bid perpetual licenses for any Custom Products. For Existing Products, Bidders may Bid either term licenses or perpetual licenses, but ITS will give preference to Bids providing perpetual licenses.
- The Bidder must Bid sufficient licenses for New York State, which in no case shall provide for fewer than 200,000 NY state and local government Candidates per year participating in 20,000 examinations per year, and under which DCS shall be able to prepare the examinations and distribute them to be administered by and used by any authorized user (such as local governments), without needing any separate or additional licenses to do so.

5.02.5 Ongoing System Support, Maintenance and Enhancement Requirements (Attachment 2.05)

The Bidder must provide an ongoing support plan that includes responses to all requirements identified in Appendix J – Description of Support Service Levels. The Bidder's response must include details on its approach to problem resolution and software maintenance. Additionally, the Bidder must describe the staffing structure for the State that is recommended to properly support an on premises solution.

5.02.6 System Testing and Acceptance (Attachment 2.06)

It is critical to have a comprehensive testing and quality assurance strategy in place to ensure a successful implementation of a new TMS. Acceptance tests must be performed on the TMS to determine if the system meets the scalability, throughput, functionality, and interoperability requirements specified herein for the operational TMS. These test plans must be for all functionality and requirements including, but not limited to, all TMS software, interfaces and performance.

5.02.7 Data Conversion and Migration (Attachment 2.07)

Provide a description of the Bidder's methodology and approach to support the conversion and migration of the data noted in Appendix I – Data Conversion and Migration into the Bidder's proposed ITS solution. The Bidder's approach must address, at a minimum, the activities and tasks that will be employed and the party responsible for the task/activity; how the Bidder would propose data problems be handled, the timing of when the data is to be migrated, and the procedure for accepting data by the Department. (See Attachment 2.07 for further details.)

5.02.8 Functional Deliverables – Test Development (Attachment 2.08)

Describe how the solution supports the business activities and operations described in the Use Cases related to Test Development. Please address the functionality, flexibility, configurability and volumes supported out of the box. If Customization (not Configuration) is required to meet the business functions described, please indicate and explain.

5.02.9 Functional Deliverables – Scoring and Analysis (Attachment 2.09)

Describe how the solution supports the business activities and operations described in the Use Cases related to Examination Scoring and Analysis. Please address the functionality, flexibility, configurability and volumes supported out of the box and whether Customization (not Configuration) is required to support the business activities and operations described.

5.02.10 Functional Deliverables – Business Challenges (Attachment 2.10)

A number of business challenges are described in this section. Two critical strategic examination methods currently utilized to manage large Candidate populations are identified. Detailed explanations for these methods can be found in Appendix C – Examination Series and Appendix D – Selective Certification. At this part of its Proposal, the Bidder must describe how the solution would provide the results described, and solve the business problems identified.

5.02.11 Functional Deliverables – Scheduling (Attachment 2.11)

The Bidder must describe how the solution supports the business activities and operations described in the Use Cases related to Examination and Candidate Scheduling. Please address the functionality, flexibility, configurability and volumes supported out of the box and whether Customization (not Configuration) is required to support the business activities and operations described.

5.02.12 Relevant Project Experience (Attachment 15 – Bidder References)

The Bidder must demonstrate relevant experience in test management systems. Use Attachment 15 to provide references from the three clients identified on Bidder response form Attachment 9 where the Contractor has performed the same or similar work as the prime Contractor, or as a Subcontractor with responsibility for delivering the services described in this RFP.

5.03 FINANCIAL PROPOSAL REQUIREMENTS

The Bidder must complete the Financial Proposal workbook (Attachment 3) to provide a detailed description of the Bidder's Pricing. All Products and services submitted in Attachment 3 must reflect the cost to meet all requirements of the RFP.

The Bidder must provide the following information in their financial Proposals to produce a life cycle cost:

- Software Licensing Cost (Tab 3) – provide the cost of proposed licensing for a 10 year period. This includes all application software needed to meet the requirements for the volumes and capabilities identified in RFP Section 5.02.4, Appendix B, Attachment 2.04 and other TMS requirements throughout the RFP. Provide a list of the software proposed to meet all TMS requirements.
- Ongoing Maintenance & Support Cost (Tab 3) - provide the monthly cost for maintenance and support for software beginning after the warranty period, and must reflect pricing to support full functionality as outlined in the RFP. (See Appendix J - Description of Support Service Level).
- Implementation Services Cost (Tab 4) - Fixed Price Proposal, Milestone Deliverables Payment Schedule – provide the fixed price Proposal, proposed deliverable amount and proposed completion date. The fixed price Proposal represents the total implementation cost for full system as required by this RFP, including but not limited to a complete Product implementation as outlined in Attachment 2.01, deliverables/milestones. This price must exclude the cost of software licenses, ongoing maintenance and support costs; and optional services costs.

- Optional Services (Tab 5) – provide the fully loaded hourly rate for all titles that would be used to fulfill optional services requests, such as change management, upgrade services and transition services. Fully loaded hourly rates must be inclusive of all direct and indirect costs, fees, profit and all overhead expenses, including, but not limited to, all training, travel costs, parking fees, and other ancillary fees and costs including permits, licenses, and insurance.

5.04 PROPOSAL FORMAT

To be considered responsive, a Bidder must submit a complete Proposal that satisfies and addresses all requirements stated in this RFP.

A Bidder's Proposal must be organized in **three (3) separate parts: (1) Administrative Proposal, (2) Technical Proposal, and (3) Financial Proposal** (collectively referred to herein as "Submissions"). A Table of Contents must clearly identify the location of all material within the Submissions by section and page number. Each part will be evaluated separately. Each part must indicate its content and be labeled, as applicable: ADMINISTRATIVE, TECHNICAL or FINANCIAL PROPOSAL.

1. Bidder must submit a total of **two (2) separate original hard copies** for each of the Administrative, Technical, and Financial Proposals. Bidder must also supply **twelve (12) additional hard copies** of the Technical Proposal.
2. Bidder must submit **two (2) electronic versions** for each of the Administrative, Technical, and Financial Proposals. Electronic media must be included on USB Flash Drives or other common media and clearly labeled. These electronic versions are to be sealed with the corresponding hard copy. All Technical and Financial Proposal submissions must be stored in unlocked files in Microsoft Office Products (Word or Excel) in Product release 2007 or higher. All other materials must be stored in currently available releases of either Adobe or Microsoft Products.
3. **The hard copy of the Administrative, Technical, and Financial Proposals must be separately sealed and labeled.** The official name of the Bidder's organization(s) as well as the name and number of the RFP must appear on the outside front cover of each copy. If the Proposals are submitted in loose-leaf binders, this information must also appear on the spine of the binders.
The electronic copy of the Administrative, Technical, and Financial Proposals must be separately sealed and labeled.
4. Bidder must NOT include any cost information (Attachments 3) in the Technical Proposal in either the hard copy or the electronic submission. Inclusion of such cost information in the Technical Proposals must result in disqualification of the Proposal.
5. The Financial Proposal must not contain any material that is applicable to the Technical Proposal in either the hard copy or the electronic submission. Inclusion of such information in the Financial Proposal may result in the disqualification of the Proposal.
6. In the event that there are any inconsistencies between the electronic Submissions and the hard copy Submissions, or between multiple hard copy Submissions for each of the three (3) parts of the Proposal, the Original, wet ink, hard copy will be deemed controlling by ITS when reviewing each Proposal.
7. **Please ensure the Administrative, Technical, and Financial Bid packets contain no unrequested documentation, sales literature or other terms.** Additional term(s) submitted on standard, pre-printed forms (including but not limited to: Product literature, order forms, license agreements, Contracts or other documents) that are attached or referenced with submissions must not be considered part of the Bid or resulting Contract, but must be deemed included for informational or promotional purposes only. This information must be submitted in a separate sealed envelope labeled as "*Supplemental Information*".
8. All Bids and accompanying documentation must become the property of the State of New York and must not be returned.

9. Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids, and are cautioned to carefully review their Bids prior to Bid submittal.

5.05 PROPOSAL DELIVERY INSTRUCTIONS

If using a commercial delivery company that requires that their shipping package or envelope be used, Bidder's Proposal must be placed within a second sealed envelope labeled as detailed below. This will ensure that Bidder's Proposal is not prematurely opened.

Complete Bids in response to this RFP are to be packaged, sealed and submitted to the Office of General Services, Procurement Services. Responses must be addressed to:

Office of Information Technology Services
Finance – Procurement and Contract Support
Swan Street Building, Core 4, Floor 2
Albany, New York 12223

All Bids must have a label on the outside of the box or package itemizing the following information:

1. **BID ENCLOSED** (preferably bold, large print, all capital letters)
2. Bid number (RFP# C000466)
3. Bid Opening Date and Time (See Section 2.03 – Key Events and Dates) (e.g., January 1, 2000, 11:00 a.m.)
4. The number of boxes or packages (i.e., 1 of 2; 2 of 2)

A Bidder must allow extra time to comply with the Building Access procedures in effect at the Empire State Plaza when hand delivering Bids or using deliveries by independent courier services. Bidder assumes all risks for timely, properly submitted deliveries.

SECTION 6 - TERMS AND CONDITIONS

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

6.01 CONTRACT TERM

The term of the Contract shall be implementation/acceptance plus five (5) years, plus one (1) optional five (5) year extension. The Contract shall take effect and commence upon the approval of the Contract by the Office of the State Comptroller of the State of New York ("OSC" or "Comptroller"), as applicable.

6.02 MODIFICATION OF CONTRACT

The Contract may be amended only by mutual written consent of the parties, and approved by the State's Attorney General and Comptroller (OSC), if required.

6.03 EXECUTORY PROVISION/CONTRACT FORMATION

Pursuant to State Finance Law, Section 112, as applicable, this Contract shall first approved by the Comptroller before becoming effective.

6.04 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:

- A. Appendix A -Standard Clauses for New York State Contracts
- B. The Contract and clarifying documents, if any, setting forth the final agreement between the Parties
- C. This Request for Proposal including any Addenda
- D. Contractor's Proposal

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

6.05 CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW

Contractor must remain responsible, as defined by State Finance Law, relevant case law and applicable guidelines, throughout the term of the Contract. Failure to do so may result in suspension or termination of the Contract.

Contractor must present evidence of its continuing legal authority to do business in NYS, its integrity, experience, ability, prior performance, and organizational and financial capacity, upon request by the State.

The State reserves the right to suspend any or all activities under this Contract, at any time if it 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 and must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice lifting the suspension order.

6.06 INDEPENDENT CONTRACTOR

Contractor is an independent Contractor, and its officers, employees, Subcontractors and agents are not and must not act as State employees in the performance of the Contract. Contractor, its officers, employees, Subcontractors and agents are not entitled to any of the benefits associated with employment by the State. The Contractor agrees, during the term of this Contract, to maintain at 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 worker's compensation, disability and unemployment insurance, and to provide the State with certification of such

insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

6.07 CONTRACTOR PERSONNEL

All Contractor's officers, employees, Subcontractors, or agents performing work under the Contract must meet or exceed the technical and training qualifications set forth in the Contract, and must comply with all security and administrative requirements of ITS, must possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and must be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under the Contract on behalf of Contractor must, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States. ITS, in its sole discretion, may refuse access to State systems and facilities or require removal from any State facility any employee of Contractor or its Subcontractors performing work under this Contract that ITS determines poses a security risk, has a work performance that ITS finds inadequate or unacceptable, or otherwise fails to meet ITS business requirements or expectations. Such action by ITS must not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

6.08 BACKGROUND CHECKS

All Contractor employees or Subcontractors that perform services under this Contract may be required to 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, regulations and policies prior to providing services. Any costs associated with the background checks, including related travel, will be borne by Contractor.

6.09 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 must 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 must 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 must be available for public inspection and copying under the provisions of the Freedom of Information Law (FOIL).

6.10 COOPERATION WITH THIRD PARTIES

Upon request by the State, the Contractor must fully cooperate with any third party designated by the State such as but not limited to other Contractors or Subcontractors retained by the State.

6.11 COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS

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

6.12 WORK OUTSIDE THE SCOPE OF THE CONTRACT

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

6.13 NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS

In addition to the requirements of NYS Finance Law §138 (requiring the State's approval of Subcontractors and assignments and/or conveyances), the Contractor must notify the State of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries or divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) 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 (v) court ordered liquidation of Contractor, its Affiliates, subsidiaries or divisions, or partners.

Upon the State's receipt of such notice, the State must 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 must 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 Services or is otherwise not in the best interests of the State.

6.14 NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE

The Contractor must 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 must follow such initial verbal notice with a written notice to ITS which must 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.

6.15 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.

6.16 PAYMENT

Payments for Services rendered shall be as specified in the Contract. All rates must be inclusive of any and all direct and indirect costs related to providing Services. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("SFL"). Deliverable based payments will be paid upon the

acceptance by ITS in writing. (See Section 6.48 Deliverable Acceptance) Maintenance payments will be paid monthly in arrears. Payments for hourly based services will be paid monthly in arrears.

6.17 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 shall 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.

6.18 WARRANTIES AND GUARANTEES

a. **Contract Deliverables.** Contractor warrants and represents that the Services required by the RFP and the Contract must 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 must meet or exceed all requirements of the Contract and any applicable laws.

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 and deliverables must meet the completion criteria set forth in the Contract, and that services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards. Failure to do so may result in the State finding that Contractor is in default of its Contract obligations.

d. **Personnel Eligible for Employment.** Contractor warrants and represents that all personnel performing Services under this Contract are qualified to provide Services and eligible for employment in the United States and must remain so throughout the term of the Contract and any extensions. Contractor must 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 (See Appendix J). For each reporting period, any Service Level Credits that are not relieved via the "Earn back" methodology as described in Appendix J shall be considered "Unrelieved Service Level Credits." The monetary amounts associated with Unrelieved Service Level Credits shall be credited to ITS on the next monthly invoice.

f. **Survival of Warranties.** All warranties contained in the Contract must survive termination of the Contract.

6.19 PRODUCT WARRANTIES

Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, must be free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, must

be repaired or replaced by Contractor at no cost or expense to ITS or any of its authorized users of the TMS system. Contractor must extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties must be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period must be borne solely by the Contractor, and neither the State, ITS nor any of its authorized users of the TMS system must in any event be liable or responsible therefor.

Where Contractor, the independent software vendor (ISV), or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty must be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor must be responsible for the coordination during the Product warranty or extended warranty periods with ISV or other third-party manufacturers for warranty repair or replacement of ISV or other third-party manufacturer's Product.

Where Contractor, ISV or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor must notify ITS and pass through the standard commercial warranty to ITS at no additional charge; provided, however, that Contractor must not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable or Recovered Materials clause, Product offered must be standard new equipment, current model or most recent release of regular stock Product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor must not be responsible for any modification of the Products made by ITS without Contractor's approval.

6.20 INDEMNIFICATION, LIMITATION OF LIABILITY

a. Indemnification

Contractor must be fully liable for the actions of its agents, officers, employees, partners, or Subcontractors, and must fully indemnify and save harmless the State 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, officers, employees, partners, or Subcontractors, without limitation; provided however, that the Contractor must 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. This section is not subject to the limitation of liability provisions of the Contract.

b. Indemnification for Intellectual Property Infringement

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

the State, without Contractor's approval, of any Products, documentation or deliverables furnished or utilized by Contractor pursuant to this Contract. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest. This section is not subject to the limitation of liability provisions of the Contract.

c. Limitation of Liability

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 must 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 must 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 must be liable for any incidental, punitive, consequential, indirect or special damages of any kind which may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by the state, the Contractor, or by others, however caused and regardless of the theory of liability even if such party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the parties (without which the transactions contemplated by this agreement would not occur) and will apply even if a remedy fails in its essential purpose.

d. No Indemnification by the State

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

6.21 FEDERAL FUNDING CLAUSES

To the extent that any of the goods or services provided under this Contract may be funded in whole or in part by federal funds, Contractor agrees to comply with all applicable federal laws, rules and regulations required for the receipt and/or expenditure of such funds pertaining to the following areas as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95:

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84 and 90, and 7 CFR Parts 15, 15b and 15d.
- b. Copeland "Anti-Kickback Act" (18 USC 874 and 40 USC 276c) which provides that all Contracts/sub-grants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit Contractors or sub-recipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient must report all suspected/reported violations to the Federal awarding agency.
- c. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) which requires all construction Contracts awarded by recipients of more than \$2000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages must be paid not less than once a week. The recipient must place a copy of the federally specified wage (the "prevailing wage") in each solicitation and the award of a Contract must 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 must provide for the rights of the federal government and the recipient 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 must 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 must not apply to ‘proprietary operating/vendor software packages’ within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii).
- g. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.), which require Contracts and sub-grants in excess of \$100,000 must 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 must 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 must also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure must 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 must not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with E.O.s 12549 and 12689. (See 45 CFR 76.) Contractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding their exclusion status and that of their principals prior to award.
- j. Contractor must 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 must (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.

6.22 SUSPENSION OF WORK

The State reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reasons for such suspension include but are not limited to, a budget freeze on State spending or declaration of emergency. Upon issuance of such notice, the Contractor must comply with the suspension order. Contractor must be paid for services performed prior to suspension in accordance with the Contract. Such suspension will be lifted upon written notice to Contractor.

6.23 TERMINATION

a. For Convenience

By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice without penalty or other early termination charges due. Such termination of the Contract must not affect any project or Purchase Order that has been issued under the Contract prior to the

date of such termination. If the Contract is terminated pursuant to this paragraph, the State must remain liable for all accrued but unpaid charges incurred through the date of the termination.

b. For Cause

For a material breach that remains uncured for more than thirty (30) days from the date of written notice to the Contractor, the Contract or Purchase Order may be terminated by the State at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible or for any of the other reasons stated in this section with the exception of termination for convenience. Such termination must be upon written notice to the Contractor. In such event, the State may complete the Contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

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 or exercise such other remedies as must 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 Bid was materially false or incomplete, or if the Contractor fails to timely or truthfully comply with ITS's request to update its Vendor Responsibility Questionnaire.

e. Mitigation of Costs

The Contractor must 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 a notice of termination and during the termination notice period, as applicable, the Contractor must take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

6.24 DEFAULT

- a.** If either party breaches a material provision of this Contract, which breach remains uncured for a period of thirty (30) days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the thirty (30) day period, such longer period of time provided that the breaching party proceeds with reasonable diligence to completely cure the breach) or if Contractor must cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or must avail itself of or become 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, then and in any such event, the other party may, at its option, terminate this Contract upon ten (10) days written notice and exercise such other remedies as must be available under this Contract, at law and/or equity.
- b.** No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract must impair any such right, power or remedy, or must be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring nor must any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- c.** If, due to default that remains uncured for the period provided herein, a third party must commence to perform Contractor's obligations under this Contract, the State must thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State must continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State must be entitled to a pro-rata refund of such payment.

6.25 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 the legal requirements for establishing a new Contract and transitioning to a replacement Contractor.

a. Transition Period

The State must determine the transition period in consultation with the Contractor and must notify the Contractor in writing, subject to the approval of the State Comptroller. 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 must continue its Contractual obligations set forth in the Contract until such time as the services provided under the Contract has been transitioned to a successor Contractor, the State, or a third party designated by the State. The Contractor must 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 must submit to the State for the State’s review and approval a detailed written plan for transition (Transition Plan) that outlines, at a minimum, the tasks, milestones, and deliverables associated with a smooth transition of Services.

d. Contractor Transition Services

Transition Services must include the performance of Contractor’s responsibilities as outlined in the Contract, and also the transferring of those responsibilities to a successor Contractor, the State, or a third party designated by the State in accordance with the Transition Plan agreed upon by the Parties. Contractor must maintain the same level of service during the transition period as is set forth in the Contract until specific tasks or services are transitioned to or assumed by a successor Contractor, the State, or a third party designated by the State.

e. Compensation for Transition Services

Contractor must be reimbursed for Transition Services performed at the rates set forth in the Contract.

f. Cooperation

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

6.26 ADDITIONAL TECHNOLOGY PROVISIONS

a. Software License

For all software licenses, Licensee (ITS) is to be granted a non-exclusive license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise up to the maximum licensed capacity stated in the Contract. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the License Scope stated above.

Licensee must have the right to use and distribute modifications or Customizations of the Product to and for use by employees, consultants, business partners, governmental entities and/or public benefit corporations otherwise licensed to use the Product, provided that any modifications, however extensive, must not diminish Licensor’s proprietary title or interest. No license, right or interest in the trademark, trade name, or service mark is granted hereunder.

Right to Purchase Additional Software – The State may elect to purchase additional software components/modules, to complement the integration of the existing collection of software components/modules to rapidly changing technology. The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered in choosing an appropriate contracting technique that facilitates the acquisition of subsequent software components:

Takes advantage of any evolution in technology or needs that occur during implementation;

Addresses complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives; and,

Reduces risk of potential adverse consequences on the overall project by isolating and avoiding custom-designed components of the system.

The Contract shall offer to ITS the better of (i) same discount rate off the current list price on the additional software components, as it was offered for the initial software components; (ii) lowest price offered to other customers.

Licensed Documentation – If commercially available, Licensee must have the option to require the Contractor to deliver, at Contractor's expense: a) one (1) hard copy and one (1) master electronic copy of the Documentation in CD-ROM format; or b) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed upon:

- Individual/Named User License – 1 copy per License;
- Concurrent Users – 10 copies per site; and,
- Processing Capacity – 10 copies per site.

Contractor must grant to Licensee a license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license. Contractor must also provide access to an on-line library to ensure that users have access to the most recent user manuals and other documentation.

Additional Software Licenses – To provide for the event that additional licenses will be necessary, bids must include a formula for increases in licensing fees that are proportionate to increases in the number of state and local government candidates per year participating in the number of examinations per year. For example, if the licensing costs in the bidder's original bid totaled to one million dollars (\$1,000,000) based on 25,000 annual exams offered, and the number of discrete exams offered under the TMS in a given year increases by 20% to 30,000 exams per year, then the licensing costs may increase by only a commensurate percentage amount, or no more than an additional two hundred thousand dollars (\$200,000).

Permitted License Transfers – As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use in a manner not originally specified in the license, including transfers within Executive agencies and departments, Public Authorities, Public Benefits Corporations, Legislature, Judicial branches, or local governments, Licensee(s) do not have to obtain the approval of the Contractor for permitted license transfers, but must provide notification to Contractor of such move(s) and certify in writing that the Product is not in use in the former Configuration. There must be no additional license or other transfer fees due to the Contractor, provided that the maximum consolidated license capacity is equal to the combined license capacity of the former Configuration.

Platform Migration – The State may elect to change the TMS technical infrastructure including the hardware, operating system, and database management system, to another platform supported by the Contractor. In such a case, the Contractor will provide the State, at no charge and with no amendment to the terms and conditions set forth herein, with all updates and software replacements necessary to use the Product on the new platform.

No Subsequent, Unilateral Modification Of Licensing Terms By Contractor – Except in regard to the maintenance agreements completed between the Contractor and ITS, notwithstanding any other provisions or other unilateral license terms which may be issued by the Contractor after the date of Comptroller's approval of the Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of the Contract, or the fact that such other agreement may be affixed to or accompany computer software upon delivery, the terms and conditions set forth herein must supersede and govern licensing and delivery of all Products and services hereunder. The parties may, however, modify the license terms as expressly provided herein, and Contractor may offer ITS more advantageous terms and conditions than those set forth herein upon mutual agreements of the parties in writing.

b. Restricted Use By Outsourcers, Service Bureaus, or Other Third Parties

Outsourcers, facilities management or service bureaus retained by the State must have the right to use the licensed Product to maintain the State's business operations, including data processing, provided that: (i) Licensee gives notice to Contractor of such intended use and means of access; and (ii) if required by Contractor, such third party agrees to the Contractor's standard nondisclosure or restricted use agreement; and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that solely necessary to provide Contracted services to the State. In no event must the State assume any liability for a third party's compliance with the terms of a non-Disclosure Agreement, nor must the non-Disclosure Agreement create or impose any liabilities on the State.

c. No Hardstop/Passive License Monitoring

Contractor hereby warrants and represents that the licensed Product and all upgrades do not and will not contain any computer code that would disable or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the licensed Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision the State User must not have an adequate remedy at law, including monetary damages, and must consequently therefore be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the State must be entitled.

d. Source Code Escrow For Licensed Product

If source code or source code escrow is offered by either Contractor or the manufacturer or developer of the licensed Product to any other commercial customers, Contractor must: (i) provide the State with the source code for the licensed Product; or (ii) place the source code in a third party escrow arrangement with a designated escrow agent who must be named and identified to the State, and who must be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the State; or (iii) certify to the State that the licensed Product manufacturer/developer has named the State, acting by and through ITS, as a named beneficiary of an established escrow arrangement with its designated escrow agent who must be named and identified to the ITS, and who must be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements to such source code, must be updated for each new release of the licensed Product in the same manner as provided above and such updating of escrow must be certified to the State in writing. Contractor must identify the escrow agent upon commencement of the Contract term and must certify annually that the escrow remains in effect in compliance with the terms of this clause.

e. Ownership and Title to Contract Deliverables

(a) Definitions.

(i) For purposes of this clause, "Products" shall mean Deliverables furnished under this Contract by or through Contractor, including Existing and Custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) software, including third party software, d) modifications, Customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(ii) For purposes of this clause, "Existing Products" shall mean licensed tangible and intangible Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular Product was in existence prior to the commencement of the Project.

(iii) For purposes of this clause, "Custom Products" shall mean Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for ITS under the Contract.

(b) Title to Project Deliverables.

Contractor acknowledges that it is commissioned by the State to perform the services detailed in the RFP. Unless otherwise specified in writing in the RFP, the State must have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product must pass to the State upon acceptance.

2. Software - Title and ownership to Existing Software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, must remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product must be licensed to the State in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the State a non-exclusive license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the State as part of Contractor's Proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the State's satisfaction) and distribute Existing Licensed Product to the State up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the RFP. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor must be responsible for obtaining these rights at its sole cost and expense.

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to the State the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein must preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in performing services under the Contract in the course of Contractor's business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State must be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in the RFP.

f. Data Ownership

All State data is owned exclusively by the State and will remain the property of the State. Contractor is permitted to use data solely for the purposes set forth in the RFP and the Contract, and for no other purpose. At no time must the Contractor access, use, or disclose any Confidential Information (including personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. The Contractor is strictly prohibited from releasing or using data or information for any purposes other than those purposes specifically authorized by the State. Contractor agrees that State data must not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Contractor or otherwise passed to other Contractors, agents, Subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by the State. Contractor specifically will not move or export Production data out of NYS' Data Center(s) without ITS' prior written permission to do so.

g. Data Protection and Transmission

Contractor must use appropriate means to preserve and protect State data. This includes, but is not limited to, use of stable storage media, regular data backups and archiving, password protection of volumes, and data encryption. Contractor must, in accordance with applicable law and the instructions of the State, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate data integrity safeguards against the deletion or alteration of such data. In the event that any data is lost or destroyed because of any act or omission of the Contractor or any non-

compliance with the obligations of this Contract, then Contractor must, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, Contractor must reimburse the State for any costs incurred by the State in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

Contractor agrees that any and all State data will be stored, processed and maintained solely on designated target devices, and that no State data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the Contract/agreement and or any addendum thereof, or the Contractor's designated backup and recovery processes, and is encrypted in accordance with all current federal and State statutes, regulations and requirements, to include requirements for data defined as confidential, financial information, personal private and sensitive information (PPSI), personally identifying information (PII) or personal health information (PHI) by statute or regulations. The Contractor must encrypt data at rest, on file storage, database storage, or on back-up media, and in transit in accordance with state and federal law, rules, regulations, and requirements. The solution must provide the ability to encrypt data in motion and at rest in compliance with state or federal law. Contractor must use secure means (HTTPS) for all electronic transmission or exchange of system, user and application data with the State.

h. Data Return and/or Destruction

At the Expiration or Termination of the Contract, at the State's option, the Contractor must provide ITS with a copy of the State data, including metadata and attachments, in a mutually agreed upon, commercially standard format and give the State continued access to State data for no less than ninety (90) days beyond the expiration or termination of the Contract.

Thereafter, except for data required to be maintained by law or the Contract, Contractor must destroy State data from its systems and wipe all its data storage devices to eliminate any and all State data from Contractor's systems. The sanitization process must be in compliance NYS Security Policy NYS-S13-003, <https://www.its.ny.gov/document/sanitizationsecure-disposal-standard>, and, where required, CJIS sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. Contractor must then certify to ITS, in writing, that it has complied with the provisions of this paragraph. The State may withhold payment to Contractor if State data is not released to ITS in accordance with the preceding sections.

i. Data Protection, Transmission, and Legal Requests And Release Of State Data To Third Parties

Except otherwise required by law, Contractor must not disclose State data to a third party. Except where expressly prohibited by law, Contractor must promptly notify ITS of any subpoena, warrant, judicial, administrative or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives and which relates to or requires Production of the information or data Contractor is processing or storing on the State's behalf. If Contractor is required to produce information or data in response to a Demand, Contractor will provide ITS with the information or data in its possession that it plans to produce in response to the Demand prior to Production of such information or data. Except as otherwise required by law, Contractor must provide ITS reasonable time to assert its rights with respect to the withholding of such information or Data from Production. If ITS is required to produce information or data in response to a Demand, Contractor will, at ITS' request and unless expressly prohibited by law, produce to ITS any information or data in its possession that may be responsive to the Demand and must provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. ITS acknowledges that Contractor has no responsibility to interact directly with the entity making the Demand. The parties agree that ITS' execution of an agreement with Contractor does not constitute consent to the release or Production of State data or information. The State has the right to review Contractor's procedures, practices and controls related to the security of State data and information assets. Upon request, Contractor will make available for review policies, procedures, practices and documentation related to the protection of State data and information assets, including but not limited to related to information security governance, network security, risk and compliance management policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any Contract resulting from this RFP or at any time during the Contract term. The State must have the right to

send its officers and employees to inspect Contractor's facilities and operations used to provide Contract services. On the basis of such inspection, the State may require Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

6.27 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 must immediately give notice to the other Party, and must exercise every commercially reasonable effort to resume performance, and an extension of the time for performance must be granted for a period to be agreed to in writing by the Parties. Any delay in performance by either Party resulting from a Force Majeure Event must not be considered a breach or default under the Contract.

6.28 DISPUTE RESOLUTION

The Parties 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. (See Section 5.02.7, Ongoing System Support Maintenance and System Enhancements) for Senior management representatives of the Parties must meet within three (3) Business Days in the event a dispute threatens the performance of a material portion of the Service. During the course of a dispute, Contractor must 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.

6.29 GENERAL PROVISION AS TO REMEDIES

- a. 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 must 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, must 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.
- b. In addition to any other remedies available to the State under the Contract and state and federal law for Contractor's default, the State 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 the State under the Contract;
 - Require Contractor to cure deficient performance or perform the requirements of the RFP at no charge to the State.

6.30 INSURANCE

The Contractor must furnish ITS with Certificates of Insurance evidencing compliance with all insurance requirements of this Section. Such Certificates must 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 must not diminish any of Contractor's obligations, responsibilities or liabilities under the Contract. All insurance required by the Contract must be specifically and exclusively for the performance of Contractor's obligations under the Contract, and must be obtained at the sole cost and expense of the Contractor; must be maintained with insurance carriers licensed to do business in New York State; must be primary and non-contributing to any insurance or self-insurance maintained by ITS and/or the State of New York; must 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, must be sent to ITS. The insurance policy(ies) must name the State of New York, its officers, agents, and employees as additional insureds thereunder (General Liability Additional Insured Endorsement must 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 must 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 must 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 must 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 must 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, must 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 must be written on the ISO occurrence form CG 0001, or a substitute form providing equivalent coverages and must 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 must 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 must 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 must 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 must 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 must 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.
- Professional Liability: The Contractor must maintain errors and omissions liability insurance with a limit of not less than \$2,000,000 per loss.
 - a. Such insurance must apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum Product hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
 - b. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to ITS prior to the policy's expiration or cancellation.
- Crime Insurance.
 - a. The policy must be issued with limits of \$50,000.
 - b. The policy must include coverage for all directors, officers, agents and employees of the Contractor.
 - c. The policy must include coverage for third party fidelity and name the State of New York as loss payee.
 - d. The policy must include coverage for extended theft and mysterious disappearance.
 - e. The policy must not contain a condition requiring an arrest and conviction.
 - f. Policies must be endorsed to provide coverage for computer crime/fraud.

- Technology Errors and Omissions. Contractor must also provide Technology Errors & Omissions Coverage for the term of the Contract extending to no less than three (3) years after the work is completed in the amount of \$1,000,000.

6.31 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 must: 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 must 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 must: 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 must 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.

6.32 TAXES

- a. 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.
- b. 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.
- c. 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 must not be valid, effective, or binding against the Agency unless the Contractor certifies to the Department of Taxation and Finance that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Department of Taxation and Finance that each affiliate and Subcontractor of such Contractor exceeding such sales

threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring state entity that it filed the certification with the Department of Taxation and Finance and that the certification is correct and complete. Accordingly, in the event the value of this Contract exceeds \$100,000 and Contractor's sales delivered by any means to locations within New York State of tangible personal property or taxable services have a cumulative value in excess of \$300,000, measured over a specific period, the Contractor must file a properly completed Form ST-220-CA with ITS and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Contract may take effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with ITS if the Contract's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of Taxation and Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete. Further information about this requirement is available at <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#XI/18/D.htm?Highlight=220>. Contractor agrees to cooperate fully with the State in administering these requirements.

6.33 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 before Contract execution.

6.34 SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES & FOIL

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

- **Security Procedures & Employee Dishonesty:**

Contractor must 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 the State during the performance of the Contract. Contractor must 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, must 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 must 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 must be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories must 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 must indemnify and hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and Subcontractors of such Confidential Information.

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

- **Press Releases**

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

- **Public Information and FOIL**

Disclosure of information related to this procurement and the resulting Contract must be permitted consistent with the laws of the State of New York and specifically FOIL. ITS must 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 in accordance with the RFP provisions. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor must at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to § 87(2) of FOIL. Acceptance of the identified information by ITS does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by ITS.

- **Federal or State Requirements**

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

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

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it must 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 must 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 must apply equally to Contractor, its agents and Subcontractors, if any. Contractor agrees that all Subcontractors, if any and agents must be made aware of and must agree to the terms of this section.

- **Off Shore restrictions**

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

6.35 PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

Some of the following provisions may not apply where the Contract goals for MWBE participation is at 0%.

- **New York State Law**

ITS is obligated under New York State Executive Law Article 15-A and 5 NYCRR 140-145 to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises (MWBEs) and the employment of minority group members and women in the performance of 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 Contract goal of **0%** for MWBE participation: **0%** for New York State certified minority-owned business enterprises ("MBE") participation and **0%** for New York State certified women-owned business enterprises ("WBE") participation. Contractor must document its good faith efforts to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract and 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," Contractor should refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, 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 must 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/Proposal, Bidder agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan must be submitted to ITS with the Proposal using the attached Form MWBE 100.
- B. Contractor will also be required to submit a Contractor's Quarterly MWBE Contractor Compliance & Payment Report to 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. 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 submitted to ITS for approval.
- C. If ITS, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, ITS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) Business Days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

- D. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Bid or Proposal. A waiver request may be submitted to ITS at any time during the term of the Contract, but must be made no later than prior to the submission of a request for final payment on the Contract. ITS must evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- E. ITS may disqualify a Bidder as being non-responsive under the following circumstances:
 - a) If a Bidder fails to submit a MWBE Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If ITS determines that the Bidder has failed to document good faith efforts.

- **Equal Employment Opportunity Requirements**

Bidders (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, must 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 must 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.

Bidders must submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form # 4, to ITS with their Bid/Proposal.

For Contracts with a value in excess of \$250,000, Bidders must also submit an Equal Employment Opportunity Staffing Plan (Form EEO 100) 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 to ITS identifying the workforce actually utilized on the Contract, if known.

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, or prior criminal conviction and prior arrest.

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.

6.36 ETHICS COMPLIANCE

Contractor, its officers, employees, agents and Subcontractors (if any) must 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.

6.37 MOST FAVORABLE TERMS AND BEST PRICING

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 to the State for substantially similar services or Products. If during the term of the Contract, the Contractor enters into an arrangement with any similarly situated entity for substantially similar services or Products, with more favorable terms or better pricing, Contractor hereby agrees to amend the Contract to provide the same to the State.

6.38 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 must execute any documents required to accomplish the transfer/assignment of the Contract. Contractor must comply with any instructions from ITS to accomplish the transfer/assignment of the Contract at no additional cost to the State.

6.39 SUBCONTRACTORS

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

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

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

6.40 WAIVER

No term or provision of the Contract must be deemed waived and no breach excused, unless such waiver or consent must 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 must 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 must be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity.

6.41 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 Contractor 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.

6.42 COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS

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

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

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

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

6.43 SEVERABILITY

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

6.44 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.

6.45 STATE'S RESERVED RIGHTS

ITS reserves the right to:

- a. Reject any or 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 60 days from the Bid opening; and,
- 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 an Offeror's Proposal and/or to determine an Offeror's compliance with the requirements of the solicitation.
- q. Waive minor irregularities and/or omissions in Bids if in the best interest of the State;
- r. In its sole discretion, reject illegible, incomplete, or vague Bids.

6.46 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS

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

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

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

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

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

*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information must also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract.

Contractor agrees to simultaneously report such information to DCS, ITS and OSC as designated below:

Department of Civil Service	Office of the State Comptroller - Bureau	NYS Office of Information
ESP, Agency Building 1	of Contracts	Technology Services
Albany, NY 12239	110 State St., 11 th Floor	Finance – Procurement and
	Albany, NY	Contract Support
	Attn: Consultant Reporting	Swan St. Building, Core 4, Floor 2
		Albany, NY

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

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

INSTRUCTIONS FOR COMPLETING FORM A AND B:

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

Form A - Contractor's Planned Employment Form (available from and submitted to the using Agency, if necessary.) (Form AC-3271-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)

Form B - Contractor's Annual Employment Report (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.) (Form AC-3272-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)

Scope of Contract: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract.

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

Number of Employees: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of Subcontractors.

Number of Hours: enter the total number of hours worked during the report period by the Employees in the employment category.

Amount Payable under the Contract: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

6.47 COMPLIANCE WITH HIPAA (HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996) AND HI-TECH (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009)

To the extent Contractor or its Subcontractor(s) create, receive, maintain, or transmit protected health information on behalf of the State pursuant to their responsibilities under this Contract, Contractor and such Subcontractors must comply with HIPAA and HI-TECH and execute a HIPAA and HITECH Compliance Certification Form provided by ITS.

6.48 DELIVERABLE ACCEPTANCE

Completed work Products and services (“Deliverables”) will be delivered to the designated State approver who has been authorized to accept deliverables. Deliverables must meet Contract requirements. The New York State approver will accept or reject the work Product or service within fifteen (15) Business Days of the receipt of the Contractor’s notification of completion. Contractor should use escalation procedures in the event New York State does not act within the specified timeframe. Deliverables will not be automatically accepted in the event of New York State failure to act. If the New York State approver rejects a work Product or service, the cause for rejection and all defects to be addressed will be documented by New York State and provided to the Contractor and the Contractor will correct all identified deficiencies, and resubmit the Deliverable for acceptance. (Please see Appendix N – Deliverable Acceptance Form)

6.49 PROCUREMENT/BID RELATED PROVISIONS

6.49.1 Summary Of Policy And Prohibitions On Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the procuring agency and Bidders during the procurement process. Bidders are restricted from making contact, from the earliest notice of intent to solicit offers/Bids through final award and approval of the procurement Contract by ITS and, if applicable, the Office of the State Comptroller (“restricted period”), to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four-year period, the Bidder must be debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp

6.49.2 New York State Vendor File Registration

Prior to being awarded a Contract, the Contractor must be registered in the New York State Vendor File (Vendor File) administered by the OSC. This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to Contractor for use on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York. For more information on the Vendor File please visit the following website: http://www.osc.state.ny.us/vendor_management/.

6.49.3 New York State Vendor Responsibility Questionnaire For Profit Business Entity

The State conducts a review of prospective Contractors (Bidders) and Subcontractors with anticipated expenditures at \$100K or more to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess a Bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible and that

the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

The State recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, Bidder should refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, http://www.osc.state.ny.us/vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

Contractor must update its Vendor Responsibility Questionnaire within ten (10) Business Days of the State's request that it do so.

6.49.4 Use Of Service-Disabled Veteran-Owned Business Enterprises In Contract Performance

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, Bidders/proposers for this Contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such partnering may be as Subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf Bidders/proposers need to be aware that all authorized users of this Contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, Bidders/proposers are reminded that they must continue to utilize small, minority and women owned businesses consistent with current State law. Utilizing SDVOBs in State Contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its SDVOB partners. SDVOBs will promote the Contractor's optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated public procurements. Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its Contractors. The State, therefore, expects Bidders/proposers to provide maximum assistance to SDVOBs in their Contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

6.49.5 Notification Of Award And Opportunity For Debriefing

The tentative awardee will be advised of selection by ITS through the issuance of a formal written correspondence indicating a proposed award. All Bidders will be notified of the selection or rejection of their Bids. Once an award has been made, Bidders may submit a written request for a debriefing as to why their Bid did not result in an award. The written request must be received by ITS_Sm.ITS_BIDS@its.ny.gov no later than ten (10) Business Days from the date of the award announcement. The purpose of the debriefing is to provide information to each Bidder about the scoring and evaluation of the requesting Bidder's Bid. ITS will not provide Bidders with information about another Bidder's Bid. This is also an opportunity for a Bidder to learn how to improve future Bids.

6.49.6 ITS Bid Protest Policy

The State of New York strives to assure a fair, open and competitive procurement process. Vendors that have complaints or questions about the RFP requirements, the procurement process or any matter affecting the submission of a Vendor's Bid are encouraged to contact the Designated Contact listed on the cover page of this RFP promptly. However, to file a Bid protest, vendors must timely follow the procedures for filing a Bid protest set forth in Section 4 of the ITS Bid Protest Policy which can be found at http://www.its.ny.gov/sites/default/files/documents/Bid_protest_policy_9_18_15_final.pdf.

6.49.7 Bid Preparation Expenses

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and Production of a Bid or for any work performed prior to the formal execution of a Contract or approval by the State Comptroller, if required.

6.49.8 Late Submissions

All Proposals must be submitted and received by the Proposal submission dates and times specified in this RFP. Proposals received after the Proposal Submission Deadline must be rejected.

Faxed Proposals and electronic submission will not be accepted. 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.

6.49.9 Bid Validity

Bids must remain open and valid and, effective, firm and irrevocable, for at least 90 days from the Bid opening date, unless the time for awarding the Contract is extended by mutual consent of ITS and the Bidder. A Bid must continue to remain an effective offer, firm and irrevocable, subsequent to such 180-day period until ITS makes a tentative award of the Contract or the Bidder withdraws the Bid in writing.

6.49.10 Bid Result Notifications

Bidders will be notified, in writing, of whether their Proposal was tentatively selected for award or not. Should ITS and a tentative awardee be unable to reach agreement as to the terms of the Contract within a reasonable time, as determined by ITS, ITS may withdraw the award and proceed to the next highest Bidder.

6.49.11 Accuracy Of Bids

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

6.49.12 Bidders, Subcontractors And Contractor Obligations

Bidders may submit Proposals that include Subcontractors. Upon award, the Bidder must be the Contractor for this engagement. The Contractor is responsible for meeting all Contract obligations set forth in the solicitation and Contract, including all Appendices, Attachments, and any subsequent amendments mutually agreed to in writing between the parties. All Subcontractors proposed by the Bidder must be identified in the Proposal and must be acceptable to ITS. The Bidder remains the single point of contact for ITS and the party that will execute the Contract. Where applicable, the Proposal may identify the Subcontractor proposed to perform certain RFP requirements but such identification does not relieve the Contractor of any responsibility for performance under the Contract with ITS.

The Contractor must provide a written copy of all Subcontracts and third party Contracts to the State upon request and include a certification that it has fully disclosed all terms and conditions of such Contracts and will disclose any amendments which occur subsequent to the original submission. Failure to provide such information must constitute a breach of Contract. Any waiver of breach as a result of Contractor's failure to furnish information required in this paragraph must not be deemed a waiver of any subsequent breach. The Contractor may request the State's approval to submit redacted copies of such Subcontracts and third party Contracts from which trade secrets or proprietary information has been removed pursuant to the Trade Secret Materials paragraph of this Contract.

6.49.13 Extraneous Terms

Bids must conform to the terms set forth in the Solicitation. Material deviations may render the Bid non-responsive and may result in the rejection of the Bid. Extraneous terms proposed by a Bidder for consideration must be submitted using the format and process set forth in the RFP. Any Bidder submissions on standard, pre-printed forms such as but not limited to Product literature, order forms, license agreements, Contracts or other documents that are attached or referenced with submissions must not be considered part of the Bid or resulting Contract, but must be deemed included for informational or promotional purposes only. Only extraneous terms accepted by ITS in writing must be expressly incorporated into the Contract. Acceptance and/or processing of a Bid must not constitute acceptance of extraneous terms. ITS will not entertain any exceptions to Appendix A - Standard Clauses for New York State Contracts.

6.50 CHANGE REQUEST

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. All such changes must be made using the Change Request Form (Appendix M) executed by both Parties, and must otherwise be in accordance with the terms and conditions of this Contract. 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.

6.51 CONFLICTS OF INTEREST

- A. The CONTRACTOR has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other Contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.
- B. The CONTRACTOR hereby reaffirms the attestations made in its Proposal and covenants and represents that there is and must be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR must have a duty to notify ITS immediately of any actual or potential conflicts of interest.
- C. In conjunction with any Subcontract under this AGREEMENT, the CONTRACTOR must obtain and deliver to ITS, prior to entering into a Subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the Subcontractor. The CONTRACTOR must also require in any Subcontracting agreement that the Subcontractor, in conjunction with any further Subcontracting agreement, obtain and deliver to the ITS a signed and
- D. ITS and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The ITS will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of ITS, a real or potential conflict of interest cannot be cured.

Conflict of Interest Disclosure

- A. The Bidder must Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the State and their Affiliates, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your Staffing Firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify ITS of, and resolve any such conflicts.
- B. The Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

6.52 PUBLIC OFFICERS LAW – FORMER NYS EMPLOYEES

Contractors, consultants, vendors, and Subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

6.53 ETHICS REQUIREMENTS – FORMER NYS EMPLOYEES

The Contractor and its Subcontractors must not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract must be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its

Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor must identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State must have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State must have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

6.54 SUBCONTRACTOR

The CONTRACTOR agrees not to Subcontract any of its services, unless as indicated in its Proposal, without the prior written approval of ITS. Approval must not be unreasonably withheld upon receipt of written request to Subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be Subcontracted to qualified, responsible Subcontractors, subject to approval of the ITS. If the CONTRACTOR determines to Subcontract a portion of the services, the Subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to ITS. As part of this explanation, the Subcontractor must submit to ITS a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONTRACTOR prior to execution of this AGREEMENT. The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT.

All Subcontracts must be in writing and must contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts. Unless waived in writing by ITS, all Subcontracts between the CONTRACTOR and Subcontractors must expressly name the STATE, through ITS, as the sole intended third party beneficiary of such Subcontract. ITS reserves the right to review and approve or reject any Subcontract, as well as any amendment to said Subcontract(s), and this right must not make ITS or the STATE a party to any Subcontract or create any right, claim, or interest in the Subcontractor or proposed Subcontractor against ITS. ITS reserves the right, at any time during the term of the AGREEMENT, to verify that the written Subcontract between the CONTRACTOR and Subcontractors is in compliance with all of the provisions of this Section and any Subcontract provisions contained in this AGREEMENT. The CONTRACTOR must give ITS immediate notice in writing of the initiation of any legal action or suit which relates in any way to a Subcontract with a Subcontractor or which may affect the performance of the CONTRACTOR's duties under the AGREEMENT. Any Subcontract must not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT total compensation to a Subcontractor exceeds or is expected to exceed \$100,000, that Subcontractor must be required to submit and certify a Vendor Responsibility Questionnaire.

6.55 ACCESS TO REGULATED DATA

To the extent that Contractor, its employees, agents or Subcontractors have access to Federal, State or Local government regulated data pursuant to their responsibilities under the Contract (such as CJIS data, Federal Tax Data, etc.), Contractor agrees that it will abide by, and will require in writing its employees, agents or Subcontractors to similarly abide by any such requirements which it has independently or which are communicated to it by ITS.