



**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

Issued: August 25, 2008

Proposal Due Date: September 23, 2008

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**TABLE OF CONTENTS**

I	OVERVIEW .....	4
II	SCHEDULE OF EVENTS .....	4
III	GENERAL PROPOSAL REQUIREMENTS.....	4
	A Inquiries .....	5
	B Submission of Questions/Clarifications.....	5
	C Submission of Proposals .....	6
	D Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines .....	7
IV	TECHNICAL REQUIREMENTS .....	7
	A Media Sanitization .....	7
	1 Sanitization.....	7
	2 Security .....	8
	B Certificate(s) of Sanitization .....	8
	C Documentation of Employee Awareness.....	9
	D Timeframe for Completion of Work.....	9
	E References.....	10
V	FINANCIAL PROPOSAL REQUIREMENTS.....	10
VI	ADMINISTRATIVE REQUIREMENTS.....	11
	A Procurement Lobbying.....	11
	1 Offerer Disclosure of Prior Non-Responsibility Determinations .....	11
	2 Offerer’s Certification of Compliance with State Finance Law 139-k(5) .....	12
	B Non-Collusive Bidding Certification .....	12
	C Secrecy Provisions .....	13
	1 Breach of Confidentiality.....	13
	D NYS Standard Vendor Responsibility Questionnaire .....	13
	E Ethics Compliance .....	14
	F Public Officer’s Law Section 73, 4.....	14
	G Freedom Of Information Law .....	15
	H Reserved Rights .....	15
VII	GENERAL TERMS AND CONDITIONS.....	16
	A Appendix A .....	16
	B Information Security Breach.....	16
	C Tax Liabilities .....	16
	D Proposal Security .....	17
	E Proposal Ownership .....	17
	F Indemnification and Limitation of Liability .....	17
	1 Indemnification .....	17
	2 Limitation of Liability.....	17
	3 Savings/Force Majeure .....	18
	G Termination.....	19
	1 Termination for Convenience .....	19
	2 Termination for Cause .....	19
	3 Procurement Lobbying Termination.....	19
	4 Vendor Responsibility Termination.....	19

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

H	Invoicing and Payment.....	19
I	Subcontractors.....	19
VIII	EVALUATION AND AWARD .....	20

**Appendices**

Appendix A, Standard Clauses for New York State Contracts

**Exhibits**

Exhibit A, Certificate of Sanitization

**Attachments**

**Program Attachments:**

- Attachment A, Proposal Certification
- Attachment B, DTF Technical Requirements Affirmation
- Attachment C, Client References
- Attachment D, Financial Response Form

**Administrative Attachments:**

- Attachment 1, Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines
- Attachment 2, Offerer Disclosure of Prior Non-Responsibility Determinations
- Attachment 3, Offerer's Certification of Compliance with State Finance Law 139-k(5)
- Attachment 4, DTF -202, Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code
- Attachment 5, Vendor Responsibility Form
- Attachment 6, Public Officers Law Form

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**I OVERVIEW**

The New York State Department of Taxation and Finance (‘the Department’ or ‘DTF’) is seeking proposals for the media sanitization of 18,000 to 20,000 magnetic tapes. The electronic data on the tapes contains confidential taxpayer information that must be protected under New York State laws. This inventory consists of 4MM, 8MM, and DLT III and IV magnetic tapes.

The magnetic tapes are maintained by a third party financial services organization that presently has physical custody of the tapes at 101 Enterprise Drive; Kingston, New York. The magnetic tapes are required to be sanitized on-site at the above referenced location. The magnetic tapes will *not* be removed from the third party financial services facility during the sanitization process.

A method of sanitization as outlined in Section IV.A, is required, as well as a Certification(s) of Sanitization, as outlined in Section IV.B. The bidder must provide an acceptable method of sanitization and must also have an established training program that familiarizes its staff with the safeguarding of confidential information.

**II SCHEDULE OF EVENTS**

<u>DATE</u>	<u>EVENT</u>
August 25, 2008	Request for Quotes Issued
September 2, 2008	Deadline for filing Attachment 1, “Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines”  <i>and</i>  Deadline for Submission of Written Questions
September 9, 2008	Issuance of Department Response to Written Questions
<b>September 23, 2008 By 2:00 p.m. EST</b>	<b>Proposal Due Date</b>
October 15, 2008	Tentative Notification of Intent to Award

**III GENERAL PROPOSAL REQUIREMENTS**

**Interchangeable Terms.** Except for purposes of the Procurement Lobbying Law, for purposes of all other provisions within this Request for Quotes (RFQ) and all attachments not relating to the Procurement Lobbying Law hereto, the terms “Offerer” and “Bidder” shall have the same meaning and shall be interchangeable, and the terms “Contractor” and “Bidder awarded the Contract” shall have the same meaning and shall be interchangeable.

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

The bidder must provide a proposal that clearly and precisely provides all of the information required by DTF as outlined in Section IV, DTF Technical Requirements and Section V, Financial Proposal Requirements. Incomplete or vague responses may result in the offer being deemed as non-responsive. Bidders must provide the Technical Attachments A, B and C and Administrative Attachments 1-6 as outlined in Section IV, DTF Technical Requirements and Section VI, Administrative Requirements, respectively.

**IMPORTANT NOTICE TO POTENTIAL OFFERERS: Receipt of proposal documents does not indicate the Department has pre-determined your company's qualifications to receive a contract award. Such determination will be based on the evaluation of proposal submissions against the requirements outlined in this RFQ.**

**A Inquiries**

All inquiries concerning this solicitation should be addressed to the following designated contacts:

<u>Contact</u>	<u>Phone #</u>	<u>E-mail Address</u>
Cindy Isgro	(518) 485-6091	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>
Christine DiVeglia	(518) 485-6091	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>
Karen Brino	(518) 485-6091	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>
Catherine Golden	(518) 457-0954	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>

Contacting individuals other than the designated contacts listed above may result in the disqualification of the bidder's proposal – please refer to the Procurement Lobbying Law and the Department guidelines posted on the Department's procurement website at: <http://www.nystax.gov/procurement> and referenced below in Section VI, Administrative Requirements.

**B Submission of Questions/Clarifications**

Prospective bidders will have the opportunity to submit written questions and requests for clarifications regarding this RFQ. All questions regarding this RFQ must be submitted via e-mail (preferred), mail or fax and must be received by the date listed on the Schedule of Events. Questions should cite the particular bid section and paragraph number of the RFQ and the bidder should indicate the name, address, telephone number and e-mail address of the individual submitting questions. Questions must be directed as follows:

**E-mail:** [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us) (preferred)

**Fax:** (518) 435-8413

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Written Correspondence:**

New York State Department of Taxation and Finance  
ATTN: Ms. Catherine Golden, Assistant Director  
Procurement Bureau  
W.A. Harriman State Office Building Campus  
Building 9, Room 234  
Albany, NY 12227  
RFQ #08-17, Media Sanitization of Magnetic Tapes

The Department will respond, in writing, to all substantive questions received timely. All questions along with the Department's responses, amendments, clarifications, and any announcements related to this RFQ will be posted on the Department's Procurement website at: <http://www.nystax.gov/procurement>.

**C Submission of Proposals**

The bidder must submit one (1) copy of its proposal which must be received no later than the due date listed in the Schedule of Events. Proposals received by DTF after the proposal due date may be rejected.

Your response related to this RFQ may be e-mailed (preferred), faxed or mailed to:

**E-mail address:** [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us)

**FAX number:** (518) 435-8413

**Mailing Address:**

New York State Department of Taxation and Finance  
ATTN: Ms. Catherine Golden, Assistant Director  
Procurement Bureau  
Building 9, Room 234  
W.A. Harriman State Office Building Campus  
Albany, NY 12227  
RFQ #08-17, Media Sanitization of Magnetic Tapes

**PLEASE NOTE:** If you are using a delivery service, the proposal should be addressed to the Department's campus address, but the delivery service should be instructed to deliver the proposal documents to the following address:

90 Cohoes Avenue  
Green Island, New York 12183

All applicable amendment information must be incorporated into the bidder's proposal. Failure to include this information may result in the bidder's proposal being deemed non-responsive.

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**D Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines**

New York State Finance Law 139-j(6)(b) requires that the Department of Taxation and Finance seek written affirmation from all Offerers as to the Offerer's understanding of, and agreement to comply with, the DTF procedures relating to permissible contacts during a Government Procurement. Information related to the Procurement Lobbying Law and DTF guidelines can be found on the Department's Procurement website at: <http://www.nystax.gov/procurement>.

Bidders should sign and submit **Attachment 1**, Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines, by the date indicated on the Schedule of Events. This attachment may be submitted in conjunction with bidder questions.

**IV TECHNICAL REQUIREMENTS**

The bidder awarded the Contract will be responsible for the sanitization of the magnetic tapes and will also be required to provide a complete inventory for the magnetic tapes throughout the sanitization process. The tapes are boxed with 40-60 per box and will be required to be re-boxed in the same boxes after sanitization. The bidder is not responsible for disposal of the tapes upon completion of the sanitization services. The bidder awarded the Contract must allow DTF employees and financial organization staff to witness any and/or all sanitation processes during the duration of the media sanitization. This will require that the bidder awarded the Contract work with DTF and the third party financial services organization to develop, establish and agree to a schedule to accomplish this requirement.

Attachment D includes a listing of the current estimated inventory by tape type for sanitization. This inventory may vary prior to award of the contract.

Certain requirements are considered critical to successful contract implementation. This following represents specific requirements the bidder must address for consideration of contract award:

**A Media Sanitization**

**1 Sanitization**

DTF's media sanitization requirements are based upon the National Institute of Standards (NIST) Special Publication 800-88, Guidelines for Media Sanitization, which can be found at the following web address: [http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88\\_rev1.pdf](http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_rev1.pdf).

The magnetic media listed on Attachment D must be processed using the following sanitization method and protocols:

**Purging data** – Purging data is a media sanitization process that prevents the recovery of the data by a “laboratory attack.” A laboratory attack would involve a threat with the resources

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

and knowledge to use standard or nonstandard systems to conduct data recovery attempts on media outside their normal operating environment. This type of attack involves using signal processing equipment and specially trained personnel.<sup>1</sup>

Degaussing is the required method for purging data where the magnetic media is exposed to a strong magnetic field. Degaussing must purge the magnetic tape in any degausser that can purge the signal enough to prohibit playback of the previous known signal. Purging by degaussing can be accomplished easier by using an NSA/CSS-approved degausser for the magnetic tape.<sup>2</sup>

## **2     Security**

The bidder awarded the Contract must provide secure handling and limited access to the electronic media materials while at the financial services organization's business location at 101 Enterprise Drive; Kingston, New York.

### **Response Requirement**

- **Equipment used to sanitize**

Describe the equipment to be used for degaussing the media listed in Attachment D. The description must enable the Department to verify that the equipment to be used will clearly meet standards required as outlined by the National Institute of Standards Special Publication 800-88.

- **Method of Sanitization**

Identify and provide a detailed description of degaussing method/process which the bidder will utilize. The description must enable the Department to verify processes identified clearly meet standards required as outlined by the National Institute of Standards Special Publication 800-88.

## **B     Certificate(s) of Sanitization**

The bidder awarded the Contract will be responsible for a complete audit trail of the media to be sanitized and must provide DTF with Certificate(s) of Sanitization as follows:

- 1     A Certificate must be provided on each day of service when the media sanitization described in Section IV.A above is completed, and contain the following minimum information: date of sanitization and inventory of magnetic tapes sanitized on that date compared with the financial services organization's tape inventory presented for sanitization on that date, and manner in which the tapes were sanitized.

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<sup>1</sup> NIST Special Publication 800-88 Guidelines for Media Sanitization

<sup>2</sup> NIST Special Publication 800-88 Guidelines for Media Sanitization - ([http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88\\_rev1.pdf](http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_rev1.pdf))

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

- 2 A Final Certificate of Sanitization will be provided upon complete sanitization of all magnetic tapes/materials, as described in Section IV.A.1 above that shows the magnetic tapes sanitized by the bidder awarded the Contract compared to the financial services organization's tape inventory.

DTF has provided a sample Certificate of Sanitization, **Exhibit A**. The bidder awarded the Contract may use this document or submit its own form which meets the requirements of this Section IV.B.

Each Certificate of Sanitization shall be signed by an authorized representative of the Contractor.

The bidder awarded the Contract must allow DTF employees and financial organization staff to witness any and/or all sanitization processes. As stated above, the bidder awarded the Contract will work with the Department and the third party financial services organization to develop and agree to a schedule to accomplish this requirement.

**Response Requirement**

The bidder's proposal must outline how it will inventory the media to provide the following minimum information: date of sanitization, an inventory (count) of the type of media sanitized, the manner in which the tapes were sanitized and a Final Certification upon the completion of the sanitization of the materials. The bidder's response must clearly indicate how their inventory controls will ensure that they match the financial services organization's magnetic tape inventory to prevent the loss of any tapes. The bidder's response must also indicate it will permit DTF employees and financial organization staff to observe all aspects of the sanitization.

**C Documentation of Employee Awareness**

The bidder must have an established security awareness program that familiarizes its staff with the safeguarding of confidential information.

**Response Requirement**

The bidder must provide DTF with a description of its employee awareness and education efforts concerning the safeguarding of confidential information.

**D Timeframe for Completion of Work**

DTF expects that the electronic media sanitization project be completed within the following time schedule:

- Work to begin within approximately four (4) weeks of receipt of Purchase Order and signed Contract Agreement with actual dates to be agreed upon by both parties.

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

- Complete sanitization of the materials to be completed within two (2) weeks of start date.

In the event DTF needs to modify the dates, this schedule will be adjusted with the mutual agreement of DTF and the bidder awarded the Contract. Changes in the time schedule required by the bidder awarded the Contract must be approved by DTF. The bidder awarded the Contract will notify DTF in advance of the date(s) and time(s) of tape sanitization.

**Response Requirement**

The bidder must certify on **Attachment B** its ability to meet the requested time frames.

**E References**

Due to the sensitive nature of the data on the magnetic media to be destroyed, DTF requires the bidder have experience in the past two years in the sanitizing of material of a confidential nature (i.e., tax, health, financial or other data containing personal and private information). DTF will contact client references which have obtained similar services from the bidder.

**Response Requirement**

Bidders must submit three (3) separate and distinct client references, preferably one reference from a government agency that bidder has provided sanitization services of confidential data. Services for the client references must have been performed within the last 2 years. References will be evaluated on a pass/fail basis.

The bidder is solely responsible for providing references that are readily available to be contacted by DTF and will respond to reference questions. If DTF is unable to contact or obtain information from a reference, the bidder will be provided **one** opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded. If references cannot be verified, the proposal may be removed from further consideration. If desired, bidders may provide a maximum of two (2) alternate references in the event an original reference cannot be contacted.

The bidder must use **Attachment C**, Client References form to provide required references.

**V FINANCIAL PROPOSAL REQUIREMENTS**

For the purposes of this RFQ, the bidder must submit **Attachment D**, Financial Response Form, for the rate to be charged for the sanitization of the magnetic media outlined on Attachment D.

The bidder must also provide a detailed breakdown of the costs (by piece and type of media) to allow for variance in the quantity of media to be sanitized. The rate must be inclusive of all costs in the performance of services outlined in this RFQ.

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**VI ADMINISTRATIVE REQUIREMENTS**

This section outlines the administrative requirements concerning the RFQ, the bidder's response and conditions related to the award. Bidders must provide the information outlined in this section in response to this RFQ.

**A Procurement Lobbying**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DTF and an Offerer during the procurement process. An Offerer is restricted from making contacts from the earliest notice of intent to solicit offers/proposals through final award and approval of the Procurement Contract by DTF 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. DTF employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award; and in the event of two findings within a four-year period, the Offerer is debarred from obtaining governmental Procurement Contracts. Information related to the Procurement Lobbying Law and DTF guidelines can be found on the Department's Procurement website at: <http://www.nystax.gov/procurement> or the New York State Office of General Services website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

**1 Offerer Disclosure of Prior Non-Responsibility Determinations**

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

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

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

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

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

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

**Response Requirement**

The bidder is responsible for the completion and submission of **Attachment 2**, Offerer Disclosure of Prior Non-Responsibility Determinations, and **Attachment 3**, Offerer's Certification of Compliance with State Finance Law 139-k(5).

**B Non-Collusive Bidding Certification**

**(Reference: State Finance Law Section 139-d and Appendix A, Clause 7)**

By submission of this proposal, each Contractor and each person signing on behalf of any Contractor certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

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

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**C     **Secrecy Provisions****

The various secrecy provisions of the Tax Law (i.e., Tax Law § 697 (e) and 1825) prohibit independent Contractors from disclosing tax information in any manner and provide for misdemeanor prosecution for violations. The secrecy provisions of the Internal Revenue Code (26 USC § 6103) provide for felony prosecution for unauthorized disclosure of Federal tax information in the possession of the Department.

All other information about the Department's operations not covered by the preceding provisions of law must be kept confidential as if it were so covered. Contractor representatives must comply with the administrative procedures enforcing these rules.

The Contractor and all staff members shall agree not to divulge or use, for their own benefit or the benefit of others, confidential tax administration information, and to subscribe to § 73 and 74 of the Public Officers Law.

**1     **Breach of Confidentiality****

The Contractor shall be liable for breach of the confidentiality provisions of this agreement in an amount not to exceed the amount allowed by applicable Federal or New York State law (including any damages construed as incidental, consequential or indirect damages).

**Response Requirement**

The bidder is responsible for the completion and submission of **Attachment #4**, Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code.

**D     **NYS Standard Vendor Responsibility Questionnaire****

Section 163(4)(d) of the State Finance Law states that “service Contracts shall be awarded on the basis of best value to a responsive and responsible offerer.” Upon identification of the bidder with the highest evaluation score, the Department will evaluate the bidder to ensure responsibility. In the event a bidder is found to be non-responsible, the bidder may be disqualified from award.

During the Contract term, Contractors must agree to evidence vendor responsibility substantially similar to, or superior to, its status as of the execution of the Contract award. The Contractor must also agree to notify the Department promptly of any material change in responsibility or if a change in ownership occurs. A review of vendor responsibility shall be undertaken prior to any Contract renewal/extension and the Department reserves the right to undertake such a review annually upon the anniversary date of any awarded Contract.

**Response Requirement**

Bidders must complete a Vendor Responsibility Questionnaire. Bidders are invited to file the required Vendor Responsibility Questionnaire on-line via the OSC New York State VendRep

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep System on-line at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by e-mail at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact one of the Department's designated contacts.

Bidders that have filed a Vendor Responsibility Questionnaire on-line that has been certified/updated within the last six months or bidders opting to file on-line must complete **Attachment 5**, Vendor Responsibility Form. If a Vendor Responsibility Questionnaire has been filed on-line and has not been certified within the last six months, the bidder must either update/recertify the on-line questionnaire or submit a new paper Vendor Responsibility Questionnaire.

Bidders filing paper questionnaires must submit a copy of the completed questionnaire with their bid proposal.

Upon notification of award, the Contractor will be required to update/recertify the on-line questionnaire.

**E Ethics Compliance**

Contractor and their employees must comply with the requirements of sections 73 and 74 of the Public Officers Law and other State codes, rules and regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, Contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in termination of the Contract(s), and/or other civil or criminal proceedings as required by law.

**F Public Officer's Law Section 73, 4.**

The Contractor shall complete and sign **Attachment 6**, Public Officer's Law Form, Section 73,4, which addresses business or professional activities by state officers and employees and party officers. This Form shall be made part of this Contract.

**Response Requirement**

The bidder is responsible for the completion and submission of **Attachment 6**, Public Officer's Law Form.

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**G Freedom Of Information Law**

During the evaluation process, the content of each proposal will be held in confidence and details of any proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the proposal contains any such trade secret or other confidential or proprietary information, it must be accompanied in the proposal with a written request to the Department to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the proposal. Notations in the header, footer or watermark of the proposal document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Department reserves the right to determine upon written notice to the Offerer whether such information qualifies for the exemption for disclosure under the law.

**H Reserved Rights**

The Department reserves the right to:

- Amend RFQ requirements to correct errors or oversights or to supply additional information as it becomes available and so notify all bidders.
- Require a bidder to provide clarification and validation of its offer through any means the DTF deems necessary. Failure of an offerer to cooperate with the DTF's effort to clarify or validate proposal information may result in the bidder being deemed non-responsive and the offer given no further consideration.
- Disqualify a bidder from receiving an award if such offerer has previously failed to perform satisfactorily in connection with public bidding or contracts(s) or is deemed otherwise not responsible.
- Evaluate and/or reject all proposals, in whole or in part, award other than the low offer, and to waive technicalities, irregularities, and omissions, or solicit new proposals if, in the Department's judgment, the best interests of the State will be served. In the event compliant bids are not received, the DTF reserves the right to consider late or non-conforming offers.
- Require the bidder to demonstrate, to the satisfaction of the DTF, any information presented as a part of its proposal.
- Use information obtained through the DTF'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 DTF's request for clarifying information in the course of evaluation and selection.
- Not award the contract, withdraw and re-bid the RFQ.
- Make awards within ninety (90) days after the due date of the proposal, during which period proposals must remain firm and cannot be withdrawn.

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**VII GENERAL TERMS AND CONDITIONS**

**A Appendix A**

Appendix A, Standard Clauses For New York State Contracts, dated June 2006, attached hereto, is hereby expressly made a part of this RFQ as fully as if set forth at length herein. Bidder awarded a contract resulting from this RFQ is responsible for adhering to all requirements of the Appendix A. **Please retain this document for future reference.**

**B Information Security Breach**

Contractor expressly agrees to comply with the provisions of Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws 2005, commonly known as the Information Security Breach and Notification Act (the "ISBNA" or "Act"), and any future amendments thereto. Contractor shall comply with all obligations imposed by the notice provisions of the ISBNA with respect to any computerized "private information" (as defined in the Act) received, handled, processed, uploaded, or maintained by Contractor on behalf of DTF under this Contract (hereinafter, the "DTF Information"). In the event of a "breach of the security of the system" (as defined by the Act), Contractor shall immediately notify DTF upon discovery or notification of such breach. Such notice to DTF shall be made in one of the following ways: by contacting the Contractor's DTF liaison for the contract, or by e-mail to Dave\_Beals@tax.state.ny.us, or by telephone to (518) 292-7827. When directed by DTF, Contractor shall immediately commence an investigation, in cooperation with DTF, to determine the scope of the breach and to restore the security of the system. To the extent DTF determines that further notifications are required to be sent out pursuant to the Act, Contractor shall be responsible for providing all notifications to all required recipients including, in accordance with New York State policy, non-New York State residents whose private information is reasonably believed to have been exposed as a result of the breach, and all costs associated with providing such notices shall be borne by the Contractor. It is expressly agreed that Contractor shall be obligated to receive authorization from DTF *prior* to making any notifications to any individuals, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consumer reporting agencies, of a breach of the security of the system, or concerning making any determination to delay notifications due to law enforcement investigations. Contractor agrees that DTF shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a breach of security of the DTF Information. Nothing contained herein shall be interpreted as reducing or altering Contractor's obligations under section 899-aa of the General Business Law.

**C Tax Liabilities**

All outstanding tax liabilities, due to the State of New York from the Contractor, or Contractor's partners, agents and subcontractors engaged in providing services under this Agreement, other than tax liabilities being contested by any such party, must be satisfied prior

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

to the execution of this Agreement, or a payment schedule arranged for their speedy satisfaction.

**D Proposal Security**

Public inspection of the proposal is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The proposals are presumptively available for public inspection.

The Public Officers' Code of Ethics (Section 74 of the Public Officers Law) sets the standards that no officer or employee of a State Agency shall disclose confidential information that he or she acquires during the course of his or her official duties. These standards control the confidentiality of a bidder's proposal unless DTF grants a petition for records access in accordance with the Freedom of Information Law.

Bidders should be advised that the confidentiality of their proposal is founded upon statute, as described above. A non-disclosure agreement, whether prescribed by DTF or the bidder, would not alter the rights and responsibility of either party under the Freedom of Information Law. Bidders should not propose a non-disclosure agreement for Department employees, for that would be legally ineffective to alter any legal responsibility under the Freedom of Information Law or the Code of Ethics.

The provisions of the Freedom of Information Law will also govern the confidentiality of any and all products or services supplied by the successful bidder.

**E Proposal Ownership**

All proposals and accompanying documentation become the property of the State of New York and will not be returned.

**F Indemnification and Limitation of Liability**

**1 Indemnification**

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

**2 Limitation of Liability**

Except as otherwise set forth in the Indemnification paragraph above, the limit of liability shall be as follows:

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

- a** Contractor's liability for any claim, loss or liability arising out of, or connected with the products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in an amount equal to two (2) times the charges specified in the Purchase Order for the products and services, or parts thereof forming the basis of the Department's claim, (said amount not to exceed a total of twelve (12) months' charges payable under the applicable Purchase Order).
  
- b** Notwithstanding the above, neither the Contractor nor the Department shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Department, the Contractor, or by others.

**3 Savings/Force Majeure**

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Department in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Department with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Department shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Department to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Department where the delay or failure will significantly impair the value of the Contract to the Department, the Department may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Department reserves the right, in its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

performance that continued performance of the Contract would result in a substantial loss.

**G Termination**

**1 Termination for Convenience**

The Department may terminate the Contract, without penalty or other termination charges due, upon thirty (30) calendar days written notice to the Contractor.

**2 Termination for Cause**

The Department reserves the right to terminate the contract for cause at any time upon written notice to the Contractor. If Contractor materially fails to perform its obligations under the Contract and does not, within thirty (30) calendar days after receiving written notice from the Department describing the alleged material failure in reasonable detail cure the material failure, then the Department may terminate the Contract, in whole or in part, and pursue its available remedies. Notwithstanding the foregoing, the Department may not allow a cure period for a violation of secrecy provisions.

**3 Procurement Lobbying Termination**

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

**4 Vendor Responsibility Termination**

The Offerer agrees that if it is found by the State that the Offerer's responses to the NYS Standard Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract by providing ten (10) days written notification to the Contractor. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the bidder awarded the contract as a result of such termination.

**H Invoicing and Payment**

Payments will be made upon receipt of final Certification of Sanitization and submission of proper invoices by the Contractor and in accordance with the provisions of Article 11-A of New York State Finance Law.

**I Subcontractors**

The bidder agrees not to enter into any subcontracts for the performance of contractual obligations without the Department's prior written approval. The Department shall have the right to approve each and every subcontract prior to giving written approval to the bidder to

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

enter into the subcontract. All agreements between the prime contractor and subcontractor shall be by written contract. All such contracts shall contain provisions specifying that:

- the work performed by the subcontractor must be in accordance with the terms of the Contract between the Department and the prime contractor;
- nothing contained in such agreement shall impair the rights of the Department;
- nothing contained under the Contract between the Department and the prime contractor shall create any contractual relationship between any subcontractor and the Department;
- the Department reserves the right to request that a member or members of the subcontractor's staff be removed from any work activity performed as a result of the subcontract;
- the Department has final approval of subcontractors; and
- in the event of Contract termination, the Department reserves the right to have any subcontract assigned to it on the same terms as between prime contractor and subcontractor (to the extent consistent with New York State Law).

All subcontracts must contain provisions similar to those in the Contract between the Department and the prime contractor so that the provisions of any subcontract entered into by the prime contractor are similar to, and not inconsistent with, the Contract awarded as a result of this RFQ.

**VIII EVALUATION AND AWARD**

The contract will be awarded to the bidder that meets all technical requirements and offers the best value optimizing quality, cost and efficiency among responsive and responsible offerers.

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Appendix A**

**STANDARD CLAUSES FOR NYS CONTRACTS  
TABLE OF CONTENTS**

- 1. Executory Clause**
- 2. Non-Assignment Clause**
- 3. Comptroller's Approval**
- 4. Workers' Compensation Benefits**
- 5. Non-Discrimination Requirements**
- 6. Wage and Hours Provisions**
- 7. Non-Collusive Bidding Certification**
- 8. International Boycott Prohibition**
- 9. Set-Off Rights**
- 10. Records**
- 11. Identifying Information and Privacy Notification**
- 12. Equal Employment Opportunities For Minorities and Women**
- 13. Conflicting Terms**
- 14. Governing Law**
- 15. Late Payment**
- 16. No Arbitration**
- 17. Service of Process**
- 18. Prohibition on Purchase of Tropical Hardwoods**
- 19. MacBride Fair Employment Principles**
- 20. Omnibus Procurement Act of 1992**
- 21. Reciprocity and Sanctions Provisions**
- 22. Purchases of Apparel**

**June 2006**

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

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

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

**NYS Department of Taxation and Finance**  
**Request for Quotes (RFQ) 08-17**  
**Media Sanitization of Magnetic Tapes**

shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

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

**NYS Department of Taxation and Finance**  
**Request for Quotes (RFQ) 08-17**  
**Media Sanitization of Magnetic Tapes**

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

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

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

**NYS Department of Taxation and Finance**  
**Request for Quotes (RFQ) 08-17**  
**Media Sanitization of Magnetic Tapes**

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**June, 2006**

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Exhibit A**

**CERTIFICATE OF SANITIZATION**

**Section 1:**

Contractor Information	
Name: Address: City, State, Zip:	
Contact Name: Contact Phone Number: Contact E-Mail Address:	

**Section 2:**

Magnetic Tape Media
Description of the data: Identify media (manufacturer, reel numbers, cartridge numbers, etc.) and the data contained.
Date of Sanitization:
Identify Sanitization method:

**Section 3:**

Acknowledgement of Media Sanitization
---------------------------------------

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

Print Name: \_\_\_\_\_

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

Company Name: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment A**

**PROPOSAL CERTIFICATION**

**The proposal 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 your full knowledge and acceptance of the terms and conditions outlined in the Request for Quotes #08-17 (Media Sanitization of Magnetic Tapes) and Appendix A (Standard Clauses For New York State Contracts) and that all information provided is complete, true and accurate. The Proposal must be firm and binding for a period of at least 90 days following the proposal due date listed in the Schedule of Events.**

Name of Company Bidding:	Bidder's Federal Tax Identification No.:		
Street Address			
City	State	Zip	County
<p>If you are not bidding, place an "x" in the box and return this page only.</p> <p><input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE:</p> <p>_____.</p>			
<p>_____</p> <p>Bidder's Signature</p> <p>_____</p> <p>Title</p>	<p>_____</p> <p>Printed or Typed Name</p> <p>_____</p> <p>Date</p>		
<p>Phone: (    )        -        ext. (    )        Toll Free Phone: (    )        -        ext. (    )</p> <p>Fax:    (    )        -        ext. (    )        Toll Free Fax:    (    )        -        ext. (    )</p>			
E-Mail Address:		Company Web Site:	

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment B**

**DTF TECHNICAL REQUIREMENTS AFFIRMATION**

Complete this form as requested in Section IV.D, Timeframe for Completion of Work.

DTF expects that the electronic media sanitization project be completed within the following time schedule:

- Work to begin within approximately four (4) weeks of receipt of Purchase Order and signed Contract Agreement with actual dates to be agreed upon by both parties.
  
- Complete Sanitization of the materials to be completed within two (2) weeks of start date.

In the event DTF needs to modify the dates, this schedule will be adjusted with the mutual agreement of DTF and the bidder awarded the Contract. Changes in the time schedule required by the bidder awarded the Contract must be approved by DTF. The bidder awarded the Contract will notify DTF in advance of the date(s) and time(s) of tape sanitization.

**BIDDER AFFIRMATION**

The bidder certifies agreement of its ability to meet the requested time frames.

**Yes**

**No**

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment C**

**Client References**

Complete this form for a minimum of three (3) separate and distinct client references for services performed within the last two years as requested in Section IV.E. It is preferred that one reference be from a government agency that bidder has provided sanitization services of confidential data. Two (2) alternate client references may be provided.

**Company Name:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Contact Phone Number:** \_\_\_\_\_

**THREE (3) CLIENT REFERENCES ARE MANDATORY**

**1. Referenced Company**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Reference Contact Person:** \_\_\_\_\_

**Contact Phone Number:** \_\_\_\_\_

**Contact Fax Number:** \_\_\_\_\_

**Contact E-Mail Address:** \_\_\_\_\_

**Date services were performed:** \_\_\_\_\_

**Method of Sanitization Performed:** \_\_\_\_\_

**Type of information sanitized:** \_\_\_\_\_

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**2. Referenced Company**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Reference Contact Person:** \_\_\_\_\_

**Contact Phone Number:** \_\_\_\_\_

**Contact Fax Number:** \_\_\_\_\_

**Contact E-Mail Address:** \_\_\_\_\_

**Date services were performed:** \_\_\_\_\_

**Method of Sanitization Performed:** \_\_\_\_\_

**Type of information sanitized:** \_\_\_\_\_

**3. Referenced Company**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Reference Contact Person:** \_\_\_\_\_

**Contact Phone Number:** \_\_\_\_\_

**Contact Fax Number:** \_\_\_\_\_

**Contact E-Mail Address:** \_\_\_\_\_

**Date services were performed:** \_\_\_\_\_

**Method of Sanitization Performed:** \_\_\_\_\_

**Type of information sanitized:** \_\_\_\_\_

**1. ALTERNATE - Referenced Company**

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

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

Reference Contact Person: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

Contact Fax Number: \_\_\_\_\_

Contact E-Mail Address: \_\_\_\_\_

Date services were performed: \_\_\_\_\_

Method of Sanitization Performed: \_\_\_\_\_

Type of information sanitized: \_\_\_\_\_

**2. ALTERNATE - Referenced Company**

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

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

Reference Contact Person: \_\_\_\_\_

Contact Fax Number: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

Contact E-Mail Address: \_\_\_\_\_

Date services were performed: \_\_\_\_\_

Method of Sanitization Performed: \_\_\_\_\_

Type of information sanitized: \_\_\_\_\_

*Note: Expand listing if necessary.*

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment D**

**Financial Response Form**

This form is for the financial proposal requirement as requested in **Section V** of the RFQ.

**Company Name:** \_\_\_\_\_

	# COUNT	COUNT BY TYPE	COST PER TYPE	TOTAL COST
<b><u>DLT Tapes:</u></b>				
150xxx	152			
160xxx	323			
200xxx	947			
201-202xxx	508			
210xxx	329			
220xxx	1,000			
250xxx	161			
260xxx	105			
300xxx	466			
Image Archive (105xxx-122xxx)	7,802			
700xxx tapes	169			
Unnumbered tapes	88			
<b>DLT Total</b>		<b>12,050</b>	<b>\$ _____</b>	<b>\$ _____</b>
<b><u>4mm tapes:</u></b>				
Arc Serv Tapes	10			
Unnumbered	223			
<b>4 mm Total</b>		<b>233</b>	<b>\$ _____</b>	<b>\$ _____</b>
<b><u>8 mm tapes:</u></b>				
Logging Tapes:				
10-16 million series	3,433			
ArcServ	177			
Early Archive tapes	2705			
Unnumbered tapes	63			
<b>8 mm Total</b>		<b>6,378</b>	<b>\$ _____</b>	<b>\$ _____</b>
<b>GRAND TOTAL</b>		<b>18,661</b>	<b>\$ _____</b>	<b>\$ _____</b>

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment 1**

**New York State Department of Taxation and Finance  
Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines**

New York State Finance Law 139-j(6)(b) requires the DTF seek written affirmation from all Offerers as to the Offerer's understanding of and agreement to comply with the DTF procedures relating to permissible contacts during a Government Procurement pursuant to subdivision three of this section.

Procurement Description, Contract or Bid Number:

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Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Offerer affirms it has read, understands and agrees to comply with the Guidelines of the New York State Department of Taxation and Finance relative to permissible contacts as required by the State Finance Law 139-j(3) and 139-j(6)(b).

By *(signature)*: \_\_\_\_\_

Name *(please print)*: \_\_\_\_\_

Title *(please print)*: \_\_\_\_\_

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

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment 2**

**New York State Department of Taxation and Finance  
Offerer Disclosure of Prior Non-Responsibility Determinations**

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

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

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

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment 2 con't**

**Offerer Disclosure of Prior Non-Responsibility Determinations**

Procurement Description, Contract or Bid Number:

---

Offerer Name:

---

Offerer Address:

---

Telephone Number:

---

E-Mail Address:

---

Name and Title of Person Submitting this Form:

---

---

1. Has any New York State agency or authority made a finding of non-responsibility regarding the Offerer in the last four years? (Please circle):      No                      Yes

If yes, please answer the following questions:

2. Was the basis for the finding of the Offerer's non-responsibility due to a violation of State Finance Law 139-j? (Please circle):                      No                      Yes
3. Was the basis for the finding of the Offerer's non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):      No                      Yes

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment 2 con't**

**Offerer Disclosure of Prior Non-Responsibility Determinations continued**

4. If you responded yes to Questions 1, 2 or 3 , please provide details regarding the finding of non-responsibility below:

Government Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Facts Underlying Finding of Non-Responsibility (Add additional pages as necessary)

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

5. Has any New York State agency or authority terminated a procurement contract with the Offerer due to the intentional provision of false or incomplete information? (Please circle):

No                      Yes

If you responded yes to the above question, please provide details regarding the termination below:

Government Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Facts Underlying Finding of Non-Responsibility: (Add additional pages as necessary)

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

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

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

Name: *(Please print)* \_\_\_\_\_

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

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment 3**

**New York State Department of Taxation and Finance  
Offerer's Certification of Compliance with State Finance Law 139-k(5)**

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

**Offerer Certification**

I certify that all information provided to the DTF with respect to State Finance Law 139-k is complete, true and accurate.

By: *(signature)* \_\_\_\_\_

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

Procurement Description, Contract or Bid Number:

\_\_\_\_\_

Name *(Please print)*: \_\_\_\_\_

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

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

DTF-202 (3/00)

**Attachment 4**

**New York State Department of Taxation and Finance  
Agreement to Adhere to the Secrecy Provisions of the Tax Law  
and the Internal Revenue Code**

The New York State Tax Law and the Department of Taxation and Finance impose secrecy restrictions on:

- all officers, employees, and agents of the Department of Taxation and Finance;
- any person engaged or retained by this department on an independent contract basis;
- any depository, its officers and employees, to which a return may be delivered;
- any person who is permitted to inspect any report or return;
- contractors and workmen hired by the department to work on its equipment, buildings, or premises, or to process returns or other papers; and
- visitors to the Departments' buildings or premises.

Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for anyone to divulge or make known in any manner the contents or any particulars set forth or disclosed in any report or return required under the Tax Law. Computer files and their contents are covered by the same standards and secrecy provisions of the Tax Law and Internal Revenue Code that apply to physical documents.

Any unlawful disclosure of information is punishable by a fine not exceeding \$10,000, imprisonment not exceeding one year, or both. State officers and employees making unlawful disclosures are subject to dismissal from public office for a period of five years.

Unauthorized disclosure of automated tax systems information developed by the department is strictly prohibited. Examples of confidential systems information include: functional, technical, and detailed systems design; systems architecture; automated analysis techniques; systems analysis and development methodology; audit selection methodologies; and proprietary vendor products such as software packages.

The Internal Revenue Code contains secrecy provisions which apply to federal tax reports and returns. Pursuant to sections 6103 and 7213 of the Internal Revenue Code, penalties similar to those in the New York State law are imposed on any person making an unauthorized disclosure of federal tax information. In addition, section 7213A of the Internal Revenue Code was enacted to prohibit the unauthorized inspection of returns or return information (also known as "browsing"). The unauthorized inspection of returns or return information by state employees is punishable by a fine not exceeding \$1000 for each access, or by imprisonment of not more than one (1) year, or both, together with the cost of prosecution.

---

I certify that I have read the above document and that I have been advised of the statutory and Department of Taxation and Finance secrecy requirements; I certify that I will adhere thereto, even after my relationship with the Department is terminated.

Organization: \_\_\_\_\_

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

Name: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Address Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment 5**

**VENDOR RESPONSIBILITY FORM**

Bidders must complete a Vendor Responsibility Questionnaire in response to this RFQ. Bidders are invited to file the required Vendor Responsibility Questionnaire on-line via the OSC New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep System on-line at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact one of the Department's designated contacts.

**Please check one of the following:**

- A Vendor Responsibility Questionnaire has been filed on-line and has been certified/updated within the last six months.
- A Vendor Responsibility Questionnaire is attached to this bid proposal.

NOTE: If a Vendor Responsibility Questionnaire has been filed on-line and has not been certified within the last six months, the bidder must either update/recertify the on-line questionnaire or submit a new paper Vendor Responsibility Questionnaire. Upon notification of award, the Contractor will be required to update/recertify the on-line questionnaire.

**NYS Department of Taxation and Finance  
Request for Quotes (RFQ) 08-17  
Media Sanitization of Magnetic Tapes**

**Attachment 6**

**PUBLIC OFFICERS LAW FORM**

**§73. Business or professional activities by state officers and employees and party officers.**

**4.**

(a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(b) No political party chairman of a county wholly included in a city with a population of more than one million, or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any city agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised directly or indirectly, by a city agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(c) For purposes of this subdivision, the term "services" shall not include employment as an employee.

I have read and agree to comply with the requirements of Public Officer's Law Section 73 (4) a.i. I further acknowledge that failure to comply shall justify contract termination by the Department and may result in the rejection of bids or proposals for future work with the Department.

By \_\_\_\_\_  
(Signature) (Title)

Firm's Legal Name \_\_\_\_\_  
(Date)