

**STATE OF NEW YORK**

DEPARTMENT OF TAXATION & FINANCE



# Request for Proposals

12-02

## Storage and Auction

## Services

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## Schedule of Events

Issuance of RFP	November 28, 2012
Deadline for filing Offerer Understanding of, and compliance with, Procurement Lobbying Guidelines	December 7, 2012
Deadline for Submission of Questions	December 7, 2012 By 2 pm EST
Department Response to Bidder Questions	December 14, 2012
Deadline for second submission of Bidder Questions	December 28, 2012 By 2 pm EST
Department response to second submission of Bidder Questions	January 7, 2013
Deadline for Submission of Notification of Intent to Bid	January 14, 2013
Proposals Due	January 28, 2013 By 2 pm EST
Notification of Intent to Award	February 28, 2013
Deadline for Contract Signature	March 30, 2013

## Preface

### A. Proposal Questions/Inquiries

Prospective Bidders will have two opportunities to submit written questions and requests for clarification regarding this Request for Proposal (RFP). All questions regarding this RFP must be submitted via e-mail (preferred), fax or mail and be received by the dates and times specified in the Schedule of Events. Questions must reference the relevant page and section of the RFP and must be directed to one of the designated contacts identified below:

E-mail: [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov)

Fax: (518) 435-8413

Written Correspondence:

New York State Department of Taxation and Finance  
Attn: Catherine Golden, Director  
Procurement Services Unit  
Office of Budget and Management Analysis  
WA Harriman State Campus  
Albany, NY 12227

Prospective Bidders should note that all clarifications and exceptions to the RFP, including those relating to the terms and conditions of the RFP, are to be resolved prior to the submission of a bid. Exceptions to Contract terms in **Exhibit C, Preliminary Contract**, must be submitted with the Bid Proposal. Bidders entering into a contract with the State are expected to comply with all the terms and conditions contained herein.

All inquiries concerning this solicitation must be addressed to one of the following designated contacts:

Catherine Golden (518) 457-0954 [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov)

Dorothy Lechmanski (518) 457-0954 [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov)

Karen Brino (518) 485-6091 [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov)

Cynthia Isgro (518) 485-6091 [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov)

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 of Taxation and Finance (DTF or Department) guidelines posted on the Department's procurement website at: <http://www.tax.ny.gov/about/procure>, and additional requirements in Section VI, Administrative Requirements.

## **B. Procurement Lobbying – Offerer Understanding of, and Compliance with, Procurement Lobbying Guidelines**

New York State Finance Law 139-j(6)(b) requires that the Department 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 website at: <http://www.tax.ny.gov/about/procure>.

Offerer's are requested to sign and submit **Attachment 2: Offerer Understanding of, and Compliance with, Procurement Lobbying Guidelines** by the date specified in the Schedule of Events. This may be submitted in conjunction with Bidder questions.

## **C. Proposal Amendments/Announcements**

All Amendments, clarifications and any announcements related to this bid will be posted on the Department's Procurement website at: <http://www.tax.ny.gov/about/procure>.

It is the responsibility of the Bidder to check the website for any amendments, clarifications or updates. All applicable amendment information must be incorporated into the Bidder's proposal. Failure to include this information in your proposal may result in the Bidder's proposal being deemed non-responsive.

## **D. Response to Bidder Questions and Requests for Clarification**

The Department will provide a written response to all substantive questions and requests for clarification. Responses to Bidder questions and requests for clarifications will be posted on the Department's Procurement website at: <http://www.tax.ny.gov/about/procure>.

## **E. Notification of Intent to Bid**

If your firm is submitting a proposal in response to the RFP, **Attachment 3, Notification of Intent to Bid**, should be completed and submitted by the date specified in the Schedule of Events. Contact information provided on this form may be used to notify Bidders of Request for Proposal changes.

## **F. Submission of Proposals**

The Bidder must submit their proposals as instructed in **Section VII, Proposal Submission**.

## **G. Contract Signing and Contract Term**

**The Bidder must agree to sign a contract within thirty (30) days of Notification of Award. If the Bidder fails to do so, the Department reserves the right to begin negotiations with the next highest ranked Bidder.** The Preliminary Contract is attached as Exhibit C. Any exceptions or additions to the terms and conditions of the Preliminary

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Contract must be identified in the Bidder's proposal. The Department will not sign any vendor supplied contract documents. As such, if there are specific terms to be included in the final Contract, they must be submitted in response to Section VI.B.19.

The Department will award one Contract for each of the ten geographical locations within the regions identified to the successful Bidder for an initial term of three years commencing upon approval of the New York State Attorney General and Office of the State Comptroller. The Contract may be renewed by mutual agreement of all parties for two, one year periods. Upon expiration of the Contract, the Department reserves the right to extend the contract until such time as all assets in the possession of the Contractor at the time of expiration are returned to the child support/tax debtor or sold at auction or a maximum of six (6) months, whichever comes first. During this extension period, the Department **will not** provide additional assets for storage/auction.

The successful Bidder must sign a Contract within thirty (30) days after Notification of Intent to Award. If the successful Bidder fails to do so, the Department reserves the right to begin negotiations with the second highest ranked Bidder.

### **RFP Key Points**

- 1. Read the RFP in its entirety.** Note key items such as: critical dates, qualifying and mandatory requirements, services required and proposal packaging requirements.
- 2. Note the name, address, phone numbers and e-mail address of the designated contacts.** These are the only individuals that you are permitted to contact regarding this RFP.
- 3. All amendments, clarifications, Bidder questions with the Department responses and any announcements relating to this bid will be posted on the Department's website.** It is the Bidder's responsibility to check the Department's website periodically for any updates. All applicable amendment information must be incorporated into the Bidder's proposal. Failure to include this information in your proposal may result in disqualification or a reduced technical score.
- 4. Take advantage of the question and answer periods.** Submit your questions by one of the methods identified by the dates and times listed in the Schedule of Events. Responses and copies of the questions will be posted on the Department's Procurement website at: <http://www.tax.ny.gov/about/procure>.
- 5. File a "Notification of Intent to Bid" form by the date listed in the Schedule of Events.**
- 6. Provide complete answers/descriptions. Bidder proposals must completely address all qualifying and mandatory requirements.** To ensure you are not unnecessarily disqualified from bid evaluation, thoroughly read all proposal requirements and provide complete responses. Use **all** the forms provided to submit your response. Vague or incomplete responses to desirable requirements may result in a reduced technical score.
- 7. Review the RFP document and your proposal.** Make sure all requirements are addressed and all copies are identical and complete.
- 8. Package your proposal as required in the RFP.** Make sure your proposal conforms to the packaging requirements. Proposals not packaged accordingly may be deemed non-responsive.
- 9. Submit your proposal on time.** Except as specified in Section VI.A.16.E, proposals received after the date and time in the Schedule of Events will not be considered for award and may be returned, unopened, to the sender.

## I. Introduction

### A. Purpose

The New York State Department of Taxation and Finance (Department or DTF) is soliciting proposals from qualified entities to provide storage and public auction services for assets that have been seized due to delinquent Child Support or Tax debt.

The Department has ten geographical areas within five regions (see map on next page) that require storage and auction services. The Bidder must identify in their bid response the geographical area for which they are submitting a bid. If the Bidder is responding to multiple geographical areas, a **separate proposal must be submitted for each geographical area (technical, administrative and financial)**.

**Please note: This bid does not include towing services. Any towing services required as a result of this contract would be procured separately.**

### B. Program Overview

The Collection and Civil Enforcement Division (CCED) of the New York State Department of Taxation and Finance is charged with the collection of unpaid NYS Tax Debt and Delinquent Child Support Debt. The Department utilizes numerous methods in the collection of the debt. Once voluntary efforts to collect these debts have been exhausted, CCED performs an investigation to identify any assets including vehicles that may be seized to satisfy the debt. When a vehicle is located, CCED arranges for the vehicle to be seized and moved to a storage facility pending resolution of the debt which may require auction of the asset. If a business is seized to satisfy a delinquent tax debt, every effort is made to secure the contents of the contents at the place of business. If that is not possible, the Department will arrange to have the business contents moved to the Bidders storage facility.

The Department is requesting proposals for its RFP to provide Storage and Auction Services for vehicles and other assets that have been seized to satisfy outstanding child support and tax debt in ten geographical locations in five regions throughout New York State, the Department reserves the right to restructure regions due to workload. The counties within each geographical area are as follows (see also diagram on next page):

#### Region 1

- a. **Erie County, Niagara County, Chautauqua County and Cattaraugus County.**
- b. **Monroe County, Livingston County, Allegany County, Orleans County, Wyoming County and Genesee County.**

**Region 2**

- a. **Broome County, Chemung County, Chenango County, Cortland County, Delaware County, Otsego County, Schuylar County, Steuben County, Tioga County and Tompkins County.**
- b. **Cayuga County, Onandaga County, Ontario County, Oswego County, Seneca County, Wayne County and Yates County.**
- c. **Herkimer County, Jefferson County, Lewis County, Madison County, Oneida County and St. Lawrence County.**

**Region 3**

- a. **Franklin County, Clinton County, Essex County, Hamilton County, Warren County and Washington County.**
- b. **Fulton County, Montgomery County, Schoharie County, Saratoga County, Schenectady County, Rensselaer County, Albany County, Greene County and Columbia County.**
- c. **Ulster County, Dutchess County, Sullivan County, Orange County, Putnam County, Rockland County and Westchester County.**

**Region 4**

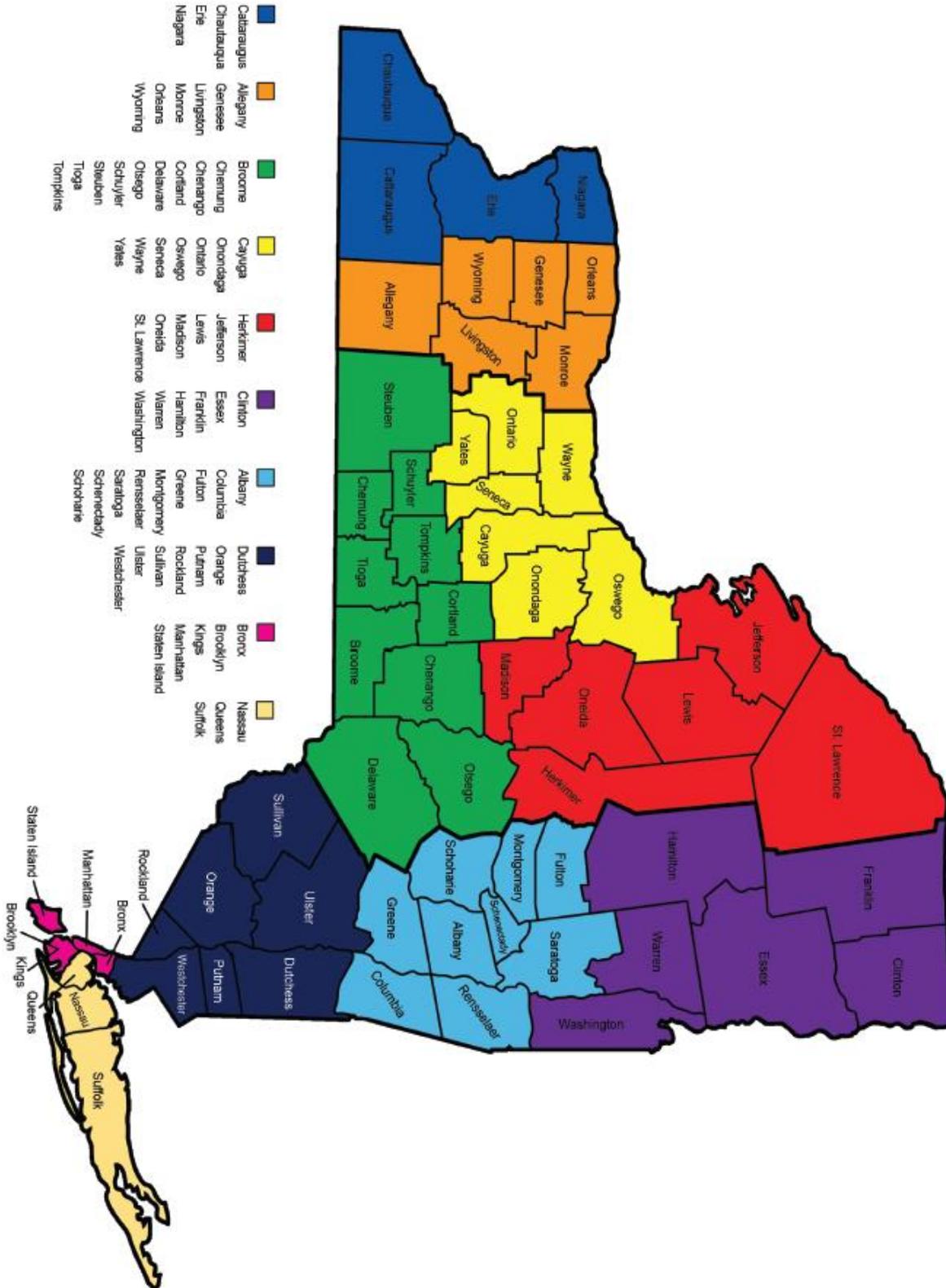
**Bronx, New York, Kings, and Richmond County.**

**Region 5**

**Queens, Nassau and Suffolk County.**

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Geographical locations:



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The tables below represent the historical seizures and auctions by regions (data based on geographical location is not available at this time). The Department does not guarantee the amount of work to be assigned to the region or the dollar amounts of the contracts awarded.

Table 1 – Vehicle Seizures

<b>REGION</b>	<b>Seizures FY 3/12</b>	<b>Auctioned FYE 3/12</b>	<b>Seizures FY 3/11</b>	<b>Auctioned FYE 3/11</b>	<b>Seizures FY 3/10</b>	<b>Auctioned FYE 3/10</b>
1a	183	87	227	115	255	112
1b	98	47	122	62	137	61
2a	59	25	69	28	55	17
2b	109	46	428	53	103	31
2c	34	14	41	17	33	10
3a	19	7	20	7	20	5
3b	123	47	134	45	133	31
3c	126	48	136	46	136	31
4	53	14	26	9	25	6
5	301	114	301	82	207	66

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Table 2 – Business Seizures.

REGION	Seizures FY 3/12	Auctioned FYE 3/12	Seizures FY 3/11	Auctioned FYE 3/11	Seizures FY 3/10	Auctioned FYE 3/10
1a	11	0	17	8	32	10
1b	11	0	18	8	32	10
2a	12	2	9	1	13	2
2b	12	2	9	1	12	2
2c	12	2	9	0	13	2
3a	16	1	20	2	53	4
3b	15	1	19	2	50	4
3c	1	0	2	0	6	2
4	141	19	72	2	78	11
5	88	21	34	3	32	2

### C. Disengagement Plan

The Contractor shall work with the Department to develop a detailed disengagement plan within six (6) months of Contract award. This plan will describe, in detail, the process to be followed for the auction or return of all assets remaining in the possession of the Contractor upon expiration of the contract term.

## II. Scope of Services

The Department is seeking one Bidder in each of the geographical locations identified to provide storage and auction services for assets that are seized for child support arrears or delinquent tax debt.

### A. Process for seized Assets:

#### Vehicle Seizures:

When the Department identifies a seized vehicle for storage, it will have the vehicle towed to the Bidder's establishment for storage. Once the vehicle is received by the Bidder, the Bidder assumes responsibility for the vehicle until such time that the Bidder is notified by the Department that the vehicle is to be returned to the owner or the vehicle has been sold at auction. When the Department notifies the Bidder that a vehicle is being released for auction, the Bidder must prepare a vehicle condition report which will identify the reserve amount for the vehicle at auction.

While vehicles are in the possession of the Bidder:

- The Department requires access to the Bidder's facility during normal business hours to return the vehicle and/or its contents to the registered or titled owner or their authorized representative.
- The Bidder must not allow access to the vehicles to any person other than a Tax Department employee (registered or titled owners or their representative's must not be allowed to retrieve any belongings without a Tax Department representative present).
- The Bidder will work with the Department to develop a procedure for vehicles released by the Department to a child support/tax debtor.
- In the event the vehicle is released by the Tax Department to the child support/tax debtor, any additional fees accrued from the time of said release are the responsibility of the child support debtor/tax debtor.
- The Bidder must provide additional services as necessary to prepare the vehicles for auction including, but not limited, to: replacement key, charge or replace battery, inflate tires.

Auction Services:

- The Bidder awarded a contract as a result of this RFP will be responsible for advertising the Public Auction of vehicles the Department has identified as released for auction.

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- The Bidder awarded a contract must keep information relating to the bids received at the auction. In the event that the winning auction bidder does not complete the purchase, the Department reserves the right to move to the next auction bidder or reject all offers.
- The Department reserves the right to refuse any or all bids if it determines, in its sole judgment, the bids received are unacceptable.
- If the Bidder awarded a contract as a result of this RFP accepts a deposit at the time of Auction and does not complete the transaction with the winning auction bidder, such deposit is non-refundable and shall be remitted, in full, to the Department.
- When multiple vehicles are seized from the same registered or titled owner, they are to be auctioned as both a lot and individually. The award of the Auction will be based on the highest grand total for the vehicles.
- At the conclusion of the auction day, any storage fees accrued from the time of acceptance of the winning bid are the responsibility of the winning bidder.

#### **Business Seizures**

When the Department seizes a business, every effort is made to secure the contents at the place of business. In the event the Department is unable to do so, the contents of the Business will be moved to the Bidder's facility for storage. For each Business seizure that requires the contents to be stored at the Bidder's facility, the contents must be isolated in a secure area. The Bidder assumes responsibility for the assets stored in their facility from receipt until such time that the asset is returned to the tax debtor or sold at auction.

Once the Business contents have been released for auction, the Bidder must identify the reserve amount for the assets at auction. In the case of a Business seizure that has been secured by the Department at the place of Business, the Bidder awarded a contract will be required to hold the auction at the place of business.

While assets are in the possession of the Bidder:

- The Department requires access to the Bidders' facility during normal business hours to return the assets to the owner or their authorized representative (applicable only for business contents stored at the Bidders facility).
- The Bidder must not allow access to the assets to any person other than a tax Department employee (owners or their representatives must not be allowed to retrieve any belongings without a Tax Department representative present).

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- In the event the assets are released by the Tax Department to the tax debtor, any additional fees accrued from the time of said release are the responsibility of the tax debtor.

Auction Services:

- The Bidder awarded a contract as a result of this RFP will be responsible for advertising the Public Auction of assets that the Department has identified as released for auction.
- The Bidder must keep information relating to the bids received at the auction. In the event that the winning bidder does not complete the purchase, the Department reserves the right to move to the next bidder or reject all offers.
- The Department reserves the right to refuse any or all bids if it determines in its sole judgment the bids received are unacceptable.
- If the Bidder awarded a contract as a result of this RFP accepts a deposit at the time of Auction and does not complete the transaction with the winning auction bidder, such deposit is non-refundable and shall be remitted, in full, to the Department.
- When multiple assets are seized from the same owner, they are to be auctioned as both a lot and individually. The award of the Auction will be based on the highest grand total for the assets.
- At the conclusion of the auction day, any storage fees accrued from the time of acceptance of the winning bid are the responsibility of the winning bidder.

**B. Payment/Remitting Auction funds to the Department:**

Remittance of all funds received from the Auction of the asset(s) (i.e. vehicle or business contents) must be **transmitted to the Department in guaranteed funds within 10 business days of the Auction**. The remittance must include a statement containing: the asset sold by case number, debtor's name and auction bid price. **In no instance shall the Bidder deduct their fees from the funds received from auction and remit the difference.**

**C. Process for Invoicing**

Upon receipt of the vehicle/asset, the Bidder awarded a contract as a result of this RFP will maintain an itemized accounting of all expenses associated with said vehicle/asset (i.e. storage, auction fee, etc.). **Within 10 days of return of the asset to the child support/tax debtor or auction of the asset, the Contractor shall submit to the Department an itemized invoice for all costs associated with the vehicle/asset.** The invoice must include, at a minimum, the case number, debtor's name, storage cost, auction fee, and any miscellaneous expenses for that asset.

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### III. Qualifying Requirements

Only qualified entities may submit a proposal in response to this RFP. A qualified entity is defined as one that meets **all of the following qualifying requirements**. Entities not meeting these qualifying requirements should not submit a proposal.

#### A. Storage and Auction Experience

The bidder must have been in the business of providing storage services for government clients for a minimum of three years since September 1, 2007. For the purpose of this bid, a government client is defined as an entity at the city, county, state, provincial or national/federal level.

#### AND

The Bidder or its subcontractor must have a minimum of three years experience providing auction services for government clients since September 1, 2007.

Furthermore the Department recognizes that new entities may form for the purpose of submitting a bid and that the new entity (which shall be considered the Bidder) may consist of existing entities. In such case, at least one such existing entity or its subcontractor must have three years experience providing storage services for a government client AND at least one such existing entity must have three years experience providing Auction Services for a government client since September 1, 2007.

#### Response Requirement

The Bidder must complete and submit **Attachment A, Storage and Auction Experience Response Form** with applicable information for up to three government entities to substantiate the storage experience required and up to three government entities to substantiate the auction experience required, including the auctioneers license number.

#### B. Insurance

At the time of proposal submission, the Bidder's company and all staff and/or subcontractors must be insured against financial loss as a result of their actions.

#### Response Requirement

On **Attachment B, Insurance Response Form**, the Bidder must provide its current insurance information and must attach a copy of its certificate of insurance including a description of coverage and the amount of coverage.

### **C. Attestation**

The Bidder must identify the geographical location for which they are submitting a bid and attest that it has read, understands and agrees to provide the services outlined in **Section II., Scope of Services.**

#### **Response Requirement**

The Bidder must complete and submit **Attachment C, Attestation Response Form.**

## IV. Technical Requirements

This section contains the specific service requirements and response criteria to the RFP. To facilitate preparation and evaluation of the proposals, the RFP technical response criteria are listed with the associated requirements.

Certain requirements are considered critical to successful project implementation. These critical requirements are indicated as **mandatory (M)**. The Bidder's response will be evaluated to determine if it meets these mandatory critical requirements. Therefore, Bidders must provide the Department with all the information requested to establish they meet the minimums identified in the mandatory requirements. Failure to provide sufficient detail to the mandatory requirement topics of this section will result in the Bidder being deemed non-responsive and removed from further consideration. Bidder responses that meet those minimums will gain evaluation points in the scoring process to the extent the response exceeds the requirement. The Bidder's response to **desirable (D)** requirements will be evaluated and scored.

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 a reference, the Bidder will be provided one opportunity, with a deadline, to assist in obtaining cooperation from those clients that have not responded.

### A. Secure Facility (D)

The Bidder must own or lease for the term of the contract, a secure storage facility for a minimum of 10 vehicles. The Department will evaluate and award points based on the security of the facility.

#### Response Requirements

The Bidder must complete **Attachment D, Secure Facility Response Form** with sufficient information to describe the secure facility and attach a picture of the site.

### B. Auction Frequency (D)

The Bidder must provide a schedule of the auctions held for the period September 1, 2011 through August 31, 2012.

#### Response Requirement

The Bidder must complete **Attachment E, Auction Frequency Response Form**.

**C. Web Presence (D)**

It is desirable that the Bidder has a web presence that allows for bids to be received via the web or phone during a public auction. The auction cannot be by web or phone alone.

**Response Requirement**

The bidder must complete **Attachment F, Web Presence Response Form**, with sufficient information to describe their web/phone bid policy.

**D. Property Inventory System (M)**

The Bidder must document its capability to develop, operate and maintain a property inventory system which will track all auction items from designation by the State of availability for auction, transfer to offerer, processing for auction offering, secure storage during auction process and until receipt of asset by winning bidder and collection of funds for purchase and confirmation of receipt of goods.

**Response Requirement**

The Bidder must complete **Attachment G, Property Inventory System Response Form**, with information describing the system to be put in place for the State.

**E. Other Services (M/D)**

The Department may require additional services in response to this bid. The Bidder must provide services such as Vehicle condition report, appraised auction value, advertising and keys.

It is desirable that the Bidder also provide services such as vehicle preparation, filling of tires and charging/replacing battery.

Other services identified in this section are only to be performed at the direction of the Department. An estimate for the additional service must be provided to Department personnel prior to approval to proceed with the service.

**Response Requirement**

The Bidder must complete **Attachment H, Other Services Response Form**, attesting they will provide the mandatory services and describing the additional services it offers in response to this RFP. At a minimum, the Bidder must include the services identified above but should also include other services that would be beneficial to the Department.

**F. References (M)**

Bidders must have prior experience providing services similar to those required in this RFP. The Department is particularly interested in and will evaluate the Bidder's prior experience providing storage and auction services for governmental entities. The Department will also evaluate, but give less weight to other storage and/or auction experience.

Bidders must provide three (3) references for clients that are similar in scope to the services set forth in this RFP. The Bidder shall be solely responsible for providing contact names and phone numbers for client references who are readily available to be contacted by the Department and capable of responding to performance questions.

**Response Requirement**

On **Attachment I, Reference Response Form**, the Bidder must provide information for client references for three (3) contracts which they have engaged in services similar to those required in this RFP. A maximum of two (2) alternate references may also be provided in the event an original reference cannot be contacted. Alternate references must be identified as such.

If DTF is unable to contact or obtain information from any reference, the Bidder will be provided one opportunity, with a deadline, to assist in obtaining cooperation from those client references who have not responded.

**G. Insurance (M)**

Prior to the commencement of the work to be performed by the contractor hereunder, the contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York with an A.M. Best Company rating of "A-" or better or as acceptable to DTF. DTF may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require DTF to accept insurance placed with a non-authorized carrier under any circumstances.

The Contractor shall deliver to DTF evidence of such policies in a form acceptable to DTF. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

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General Conditions:

A. **Conditions Applicable to Insurance.** All policies of insurance required by this Agreement must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of insurance and policy limits required from the Contractor are specified in Paragraph B, Insurance Requirements, below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by DTF, policies must be written on an **occurrence** basis. Under certain circumstances, DTF may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase, at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the contract. Written proof of this extended reporting period must be provided to the Agency prior to the policy's expiration or cancellation.
3. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to DTF, before commencing any work under this contract. Certificates shall reference the Contract Number. Certificates shall be mailed to:

Catherine Golden, Procurement Director  
New York State Department of Taxation and Finance  
Office of Budget and Management Analysis  
WA Harriman State Campus  
Albany, NY 12227

Unless otherwise agreed to, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to DTF, Attention: Catherine Golden, Procurement Director, New York State Department of Taxation and Finance, Office of Budget and Management Analysis, WA Harriman State Campus, Albany, NY 12227. In addition, if required by DTF, the Contractor shall deliver to DTF within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

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Certificates of Insurance shall:

- a. Be in the form approved by DTF;
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract;
- c. Specify the Additional Insureds and Named Insureds herein;
- d. Refer to this contract by number, the Supplemental Certificate, and any other attachments on the face of the certificate;
- e. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit; and
- f. Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance, Supplemental Insurance Certificates, and other attachments) will be accepted.

- 4. Primary Coverage.** All insurance policies shall provide that required coverage shall apply on a primary and not on an excess or contributing basis to any other insurance that may be available to the Agency for any claim arising from the Contractor's Work under this contract, or as a result of the Contractor's activities. Any other insurance maintained by DTF shall be excess and not contribute with the Contractor's insurance regardless of the other insurance clause contained in DTF's own policy of insurance.
- 5. Policy Renewal/Expiration.** At least two weeks prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to DTF than the expiring policies shall be delivered to DTF in the manner required for service of notice in Paragraph A. 3. Certificates of Insurance/Notices above. If, at any time during the term of this contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth on the Contract or proof thereof is not provided to DTF, the Contractor shall immediately cease Work on the Project. The Contractor shall not resume Work on the Project until authorized to do so by DTF. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to DTF, shall not give rise to a delay claim or any other claim against DTF. Should the Contractor fail to provide or maintain any insurance required by this Contract or proof thereof is not provided to DTF, STF may withhold further contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the Contractor, require the Surety "if any" to secure

appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchases to the Contractor.

- 6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss of payments within the deductible or self-insured retention.
- 7. Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined to commensurate the work of the Subcontractor. Proof thereof shall be supplied to DTF.

B. Specific Coverages and Limits

The types of insurance and the minimum policy limits shall be as follows

I. General Liability

Commercial General Liability Insurance (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit – not less than \$2,000,000
- General Aggregate – \$3,000,000
- Products/Completed Operations – \$2,000,000
- Personal Advertising Injury - \$1,000,000
- Damage to rented property - \$50,000
- Medical Expense - \$5,000

Coverage shall include, but not be limited to, the following:

- Premises liability,
- Independent contractors,
- Blanket contractual liability, including tort liability of another assumed in a contract,
- Defense and/or indemnification obligations, including obligations assumed under this contract,
- Cross liability for additional insured's,

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- Products/completed operations for a term of no less than three years, commencing upon acceptance of the work, as required by the contract,
- Contractor means and methods,
- Liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the Policy:

- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form;
- b. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B).

Limits may be provided through a combination of primary and umbrella/excess liability policies.

Policies shall name DTF as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the — Each Occurrence limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Agency. Any other insurance maintained by the Agency shall be excess of and shall not contribute with the Contractor’s or Subcontractor’s insurance, regardless of the —Other Insurance clause contained in either party’s policy of insurance.

II. Workers’ Compensation

For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Workers’ Compensation Law.

Evidence of Workers’ Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Commissioner of the Workers’ Compensation Board:

- 1) C-105.2 (September 2007, or most current version) – Certificate of Workers’ Compensation Insurance
- 2) U-26.3 – Certificate of Workers’ Compensation Insurance from the State Insurance Fund.

3) GSI-105/SI-12 – Certificate of Workers’ Compensation Self Insurance.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

III. Disability Benefits

For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Disability Benefits Law. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers’ Compensation Board:

- 1) DB-120.1(May 2006 or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law.
- 2) DB-155 – Certificate of Disability Self Insurance.
- 3) CE-200 – Certificate of Attestation of Exemption. [**Note:** This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by Law. The Agency will not accept this as an exemption from providing Workers’ Compensation Insurance].

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

IV. Professional Liability

The Professional and any professional subcontractor retained by the Professional to work on the Contract shall procure and maintain during and for a period of three (3) years after the completion of this Contract, Professional Liability Insurance in the amount not less than \$1,000,000 per occurrence issued to and covering damage for liability imposed on the Professional by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. The professional Liability may be issued on a claims-made policy form, in which case the Professional shall purchase at its sole expense, with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

DTF shall be endorsed as additional insured.

V. Crime Insurance

CRIME INSURANCE, on loss sustained form in an amount not less than \$1,000,000, including coverage for: Employee Theft Forgery or Alteration Inside the Premises - Theft of Money and Securities Inside the Premises- Robbery or Safe Burglary of Other Property Outside the Premises Computer Fraud Money Orders and Counterfeit Paper Currency Policy must allow for reporting of circumstances or incidents that might give rise to future claims. The policy must include an extended reporting period of no less than three years with respect to events which occurred but were not reported during the term of the policy. The Department must be included as —Loss Payees as respects this specific amount as their interests may appear. Any warranties required by the insurer must be disclosed and complied with. Said insurance shall extend coverage to include the principals.

VI. Umbrella and Excess Liability

When the limits of the CGL and/or Employers Liability policies procured are insufficient to meet the limits specified, the Contractor shall procure and maintain Commercial Umbrella and/or Excess Liability policies with limits in excess of the primary; provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary. Any insurance maintained by DTF or any additional insured shall be considered excess of and shall not contribute with any other insurance procured and maintained by the Contractor including primary, umbrella and excess liability regardless of the other insurance clause contained in either parties policies.

The insurance requirement will be monitored by the Department during the term of the contract and the contractor may be required to periodically adjust the amount of the insurance level. The Department must be provided written notice at least (30) days prior to the cancellation, non-renewal, or material alteration in coverage. Refer to Article IV of the Preliminary Contract (**Exhibit C**).

**Proposal Response Requirement**

On **Attachment J, Insurance Response Form**, the bidder must agree to obtain the insurance coverage as defined in this Section.

## **V. Financial Requirements**

In response to this section, the Bidder must complete Attachment 14, Financial Response Form. Bidders should only use Attachment 14 to present their pricing. Bidders should not modify or change the attachment. Pricing information should be completed as presented. All costs associated with the requirements of the RFP must be incorporated into the Bidder's financial response. No other add-on costs are permitted.

Fees provided on Attachment 14 may be increased for each subsequent annual period of said term upon the anniversary of the Contract resulting from this RFP with sixty (60) days written notice to the Department. Such increase will be limited to the lesser of the Consumer Price Index for All Urban Customers (CPI-U) as reported by the U.S. Department of Labor, Bureau of Statistics for the preceding twelve (12) month period or five percent (5%) per annum over the prior year's Fee.

If the renewal option is exercised, rate increases for each of the two subsequent renewal periods shall be so limited.

Additional payment information is located in the Administrative Contract Conditions, Section VI.B.2 and, Section VI of the Preliminary Contract.

## **VI. Administrative Requirements**

### **A. Administrative Proposal Conditions**

With the submission of a response to this Request for Proposal, the Bidder agrees to the proposal conditions outlined in Section VI. A.

#### **1. Issuing Agency**

This RFP is issued by the New York State Department of Taxation and Finance, which is responsible for all criteria stated herein and for evaluation of all proposals submitted.

#### **2. Solicitation**

This RFP is a solicitation to bid, not an offer of a contract.

#### **3. Liability**

The State of New York is not liable for any costs incurred by a Bidder in the preparation and production of any proposal, or for any work performed prior to the execution of a formal contract.

#### **4. Proposal Ownership**

All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Department reserves the right to use any of the portions of the Bidder's proposal not specifically noted as proprietary.

#### **5. Proposal Security**

Each Bidder's proposal will be held in strict confidence by Department staff and will not be disclosed except to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain approvals of those agencies for the final contract and except as required by law.

Public inspection of the bids is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The bids are presumptively available for public inspection. If this would be unacceptable to Bidders, they should apply to the Department for trade secret protection for their bid.

The public officers' code of ethics (Section 74 of the Public Officers Law) sets the standard that no officer or employee of a State agency shall disclose confidential information that he acquires during the course of his official duties. These standards control the confidentiality of a Bidder's proposal unless the Department grants a petition for records access in accordance with the Freedom of Information Law.

Bidders should be advised that the confidentiality of their proposals is founded upon statute, as described above. A nondisclosure agreement, whether prescribed by the

Department or the Bidder, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Bidders should not propose a nondisclosure 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.

#### **6. Timely Submission**

The Bidders are solely responsible for timely delivery of their proposal to the location set forth by the stated bid due date/time and are solely responsible for delays in receipt, including but not limited to those due to third-party carriers.

#### **7. Proposal Effective Period**

The Bidder's proposal must be firm and binding for a period of at least 180 days following the proposal due date.

#### **8. Bid Opening**

Bids will not be opened publicly. The Department reserves the right at any time to postpone or cancel a scheduled bid opening.

#### **9. Bidder Proposal Clarification**

Prior to award, the Department reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure of a Bidder to cooperate with the Department's effort to clarify a proposal may result in the proposal being labeled as non-responsive and be given no further consideration.

Additionally, the Department reserves the right to use information submitted by the Bidder in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP.

#### **10. Bid Evaluation and Selection**

See **Section VIII: Proposal Evaluation**, regarding bid selection and evaluation methodology. Submitted proposals may be reviewed and evaluated by any personnel or agents of the Department, other than one associated with a competing Bidder.

#### **11. Contract Negotiations and Authorized Negotiators**

During contract negotiations, the Department must have direct access to Bidder personnel who have full authority to make commitments on behalf of the Bidder. Bidders must include, as part of their proposal, any restrictions under which their primary negotiators will operate.

## **12. Bidder Notification of Intent to Award**

The successful Bidder will be advised of selection by the Department through the issuance of a “Notification of Intent to Award” letter. Bidders who have not been selected by the Department in response to this RFP shall be notified of such non-selection.

## **13. Proposal Review and Contract Approval**

Any contract resulting from this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller.

## **14. Debriefing Sessions**

Bidders will be notified in writing and may request the opportunity for a debriefing session. Such sessions will be limited to discussions of evaluation results as they apply to the Bidder receiving the debriefing.

## **15. Bid Protest Policy**

The Department’s procedures for handling protests of bid awards are set forth in **Appendix B: DTF Bid Protest Policy**.

## **16. Reserved Rights**

The Department of Taxation and Finance reserves the right to exercise the following:

- A. Change any of the scheduled dates herein.
- B. Amend RFP specification(s) after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all Bidders.
- C. Withdraw the RFP, at its sole discretion.
- D. Eliminate a mandatory requirement when all Bidders cannot meet such requirement.
- E. Evaluate, accept and/or reject any and all proposals, in whole or in part, and to waive technicalities, irregularities, and omissions if, in the Department’s considered judgment, the best interests of the Department will be served. In the event compliant bids are not received, the Department reserves the right to consider late or non-conforming bids as offers.
- F. Require the Bidder to demonstrate, to the satisfaction of the Department, any information presented as a part of their proposal.
- G. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offerer’s proposal and/or to determine an Offerer’s compliance with the requirements of the solicitation.

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- H. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the solicitation.
- I. Use proposal information obtained through the Department'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 Department's request for clarifying information in the course of evaluation and selection under this RFP.
- J. Prior to the bid opening, determine a tie breaking mechanism for award of the contract to serve the best interests of the State.
- K. Negotiate with the successful Bidder within the scope of the RFP to serve the best interests of the State.
- L. Conduct contract negotiations with the next ranked responsible Bidder should the Department be unsuccessful in negotiating an agreement with the selected Bidder.
- M. If the Department must terminate the contract for non-performance or is unable to maintain the support required, the Department reserves the right, with the approval of the Attorney General and the Office of the State Comptroller, to award a contract to the next highest ranked Bidder of the original bid submission within the first twelve months of the award.

## **B. Administrative Contract Conditions**

**With the submission of a response to this Request for Proposal, the Bidder agrees to the contract conditions outlined in Section VI. B unless the Bidder proposes extraneous terms (see Section VI.B.19).**

### **1. Appendix A**

Appendix A – Standard Clauses for New York State Contracts will be incorporated, in its entirety, into any Contract resulting from this RFP.

### **2. Payments**

All payments will be made in accordance with Article XI-A of the New York State Finance Law.

### **3. Public Announcements**

Public announcements or news releases relating to this RFP or the resulting Contract shall not be made by any Bidder or its agent without the prior approval of the Department. All requests for public announcements should be directed to one of the designated contacts specified herein. Such approval shall not be considered until an executed contract is in place.

#### **4. New York State Vendor File**

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

##### **Response Requirement**

If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor id number on the first page of the Proposal document.

If the Bidder is not currently registered in the Vendor File, complete the enclosed **Exhibit B, OSC Substitute W-9 Form**, and submit it with your bid. The Procurement Services Unit will initiate the vendor registration process for all Bidders recommended for Contract Award. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website:

[http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/)

#### **5. Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

##### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A, the Department recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of Department contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business

enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the Department establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

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

For purposes of this solicitation, DTF hereby establishes an overall goal of **0%** for MWBE participation; **0%** for Minority-Owned Business Enterprises (“MBE”) participation and **0%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

#### **6. Equal Employment Opportunity Requirements**

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

Bidder further agrees, where applicable, to submit with the bid **Attachment 4, Staffing Plan**, identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to DTF, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic

violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

**7. Omnibus Procurement Act of 1982**

The Omnibus Procurement Act of 1982 requires that by signing this bid proposal, 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 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 by 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;
- d. The Contractor acknowledges notice that New York 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.

**8. Permission to Investigate**

In the event that the Department determines it necessary to investigate evidence relative to a possible or actual 1) crime or 2) breach of confidentiality or security, Contractor and its subcontractors shall cooperate fully with the Department to the extent permitted by law to investigate and identify the responsible individuals. Contractor and its subcontractors shall, to the extent permitted by law, make their employees and all relevant records, including personnel records and employee photographs, available to Department investigators upon request by the Department's Office of Risk Management. The Department may interview Contractor's employees and/or agents in connection with an investigation during normal business hours.

## 9. Cover Letter

A transmittal letter must be signed by an official authorized to bind the Bidder to its provisions.

### **Response Requirement:**

The cover letter must be signed by an official authorized to bind the Bidder to proposal provisions.

The cover letter must include the following:

- The complete name and address of the bidding entity;
- The geographical location being bid;
- The Federal or Taxpayer Identification Number of the entity; and
- An affirmation that the proposal is binding for the required period indicated in Section VI. A. 7.

## 10. Vendor Responsibility Questionnaire

Article XI §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 score, the Bidders’ Vendor Responsibility will be analyzed to ensure that the Bidder is responsible.

In the event that a Bidder is found to be not responsible, the Bidder may be disqualified.

### **Response Requirement:**

Bidders must complete a Vendor Responsibility Questionnaire. Bidders are invited to file the required Vendor Responsibility Questionnaire online via the OSC New York State VendRep system or may choose to complete and submit a paper questionnaire. To enroll 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 online 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 [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@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 online that has been certified/updated within the last six months or Bidders opting to file online must complete **Attachment 5, Vendor Responsibility Response Form**. If a Vendor Responsibility Questionnaire has been filed online and has not been certified within the last six months,

the Bidder must either update/recertify the online questionnaire or submit a new paper Vendor Responsibility Questionnaire.

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

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

#### **11. MacBride Fair Employment Principles Form**

Required as part of the proposal submission in accordance with Chapter 807 of the Laws of 1992 and in accordance with Section 165 of the State Finance Law, the Bidder, by submission of this bid, certifies that it or any individual or legal entity that the Bidder holds a 10% or greater ownership interest in the Bidder, either have business operations in Northern Ireland and, if yes, shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring if compliance with such Principles.

##### **Response Requirement**

Each Bidder must complete and submit the Non-Discrimination in Employment in Northern Ireland: **Attachment 6, MacBride Fair Employment Principles Form.**

#### **12. Designation of Prime Contact**

This designation will last for the entire evaluation process and contract negotiations, and the Bidder must certify that this individual is authorized to respond on the behalf of the Bidder. Any change in this designation must be submitted in writing to the Department and include a revised form.

##### **Response Requirement**

Each Bidder must complete and submit the **Attachment 7, Designation of Prime Contact Form.**

#### **13. Non-Collusive Bidding Practices Certification**

A bid shall not be considered for award nor shall any award be made where the conditions of the Non-Collusive Bidding Certification have not been complied with; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where the above conditions have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determine

that such disclosure was not made for the purpose of restricting competition (Section 139-d of the State Finance Law).

### **Response Requirement**

The Bidder is responsible for reading, signing and submitting the **Attachment 8, Non-Collusive Bidding Certification**.

### **14. 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/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DTF and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contract that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, are identified in the Preface section of the Request for Proposal. 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/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four-year period; the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Information related to the Procurement Lobbying Law and DTF guidelines can be found on the Department’s Procurement website at: <http://www.tax.ny.gov/about/procure>.

Contacting individuals other than the designated contacts listed in the Preface Section of this document during the restricted period may result in disqualification of the Bidder’s proposal – please refer to the Procurement Lobbying Law and the Department’s guidelines posted on the Department’s website at: <http://www.tax.ny.gov/about/procure>.

#### **a. 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: (1) a violation of State Finance Law §139-j to (2) 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

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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 or 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.

**Response Requirement**

Each Bidder must complete and submit the **Attachment 9, Offerer Disclosure of Prior Non-Responsibility Determinations**.

b. 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 Governmental Entity with respect to State Finance Law 139-k is complete, true and accurate.

The Department reserves the right to terminate any Contract award as a result of this RFP in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete.

**Response Requirement**

Each Bidder must complete and submit **Attachment 10, Offerer's Certification of Compliance with State Finance Law 139-k(5)**.

### **15. Secrecy Provisions (DTF-202)**

Bidders are required to adhere to secrecy provisions as outlined in Article VII, of the **Preliminary Contract, Exhibit C**.

#### **Response Requirement**

Each Bidder must complete and submit **Attachment 11, New York State Department of Taxation and Finance Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code**.

### **16. Ethics Compliance**

All Bidders/contractors and their employees must comply with Public Officers Law §§73 and 74, Chapter 1 of the Laws of 2005, the Procurement Lobbying Reform Act of 2005, and other State statutes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the bid, the Bidder 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 disqualification from the bidding process, termination of Contracts, and/or other civil or criminal proceedings as required by law.

#### **Response Requirement**

Each Bidder must complete and submit **Attachment 12, Public Officers Law Form** which addresses business or professional activities by state officers and employees and party officers. This form shall be made part of the resultant contract.

### **17. Sales and Compensating Use Tax Documentation**

Pursuant to Tax Law Section 5-a, Bidders will be required to complete and sign, under penalty of perjury, **Contractor Sales Tax Certification Form ST-220, Exhibit A**. Bidders must also submit a copy of the Certificate of Authority, if available, for itself, any affiliates, and any subcontractors required to register to collect state sales and compensating use tax. If Certificates of Authority are unavailable, the Contractor, affiliate, subcontractor or affiliate of subcontractor must represent that it is registered and that it has conferred such status with the Department.

**Exhibit A** provides the Contractor Certification Forms and Instructions for completing the forms. ST-220-TD must be filed with and returned directly to the Department address provided on the form. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new form ST-220-TD must be filed with DTF. Completion of the form at the time of bid submission is not required; however, Form ST-220-TD must be filed and returned to DTF upon notification of Contract award.

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Form ST-220-CA must be provided to the Office of Budget and Management Analysis **upon notification of contract award** certifying that the Contractor filed ST-220-TD. Proposed Contractors should complete and return the certification form within two business days of request.

Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at 1-518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the Department's website: <http://www.tax.ny.gov>.

### **18. Prime Contractors/Subcontractors**

The successful Bidder shall act as Prime Contractor under the contract, and shall be held solely responsible for contract performance by the Bidder, its partners, officers, employees, subcontractors and agents. The Bidder shall be responsible for payment of all subcontractors and suppliers, including all third-party service providers contracted by or through the Bidder in performance of the contract.

Where services are supplied by or through the Bidder under the contract, it is mandatory for the Bidder to assume full integration responsibility for delivery, installation, maintenance, performance and support services for such items, as applicable. The Bidder shall also be responsible for payment of any license fees, rents or other monies due third parties for services or materials provided under this contract.

Proposed subcontractors must be identified at the time of bid submission and are subject to the approval of the State (see **Article XIV**, General Terms and Conditions of **Exhibit C: Preliminary Contract**, for additional information).

### **Response Requirement**

The Department requires a list of subcontractors who will be utilized for the performance of services under any resultant contract as well as a description of the services to be subcontracted. This information must be provided on the **Attachment 13, Listing of Proposed Subcontractors Form**.

## **19. Proposed Extraneous Terms**

Proposals must conform to the terms and conditions set forth in this RFP and the **Preliminary Contract, Exhibit C**. Any objections to the contract terms and conditions set forth in this section of the RFP (Section VI.B.) and the **Preliminary Contract, Exhibit C**, must be provided to the Department in the Bidder's Administrative Proposal. Material deviations to the terms and conditions set forth in the RFP (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection.

### **Response Requirement**

The Bidder must attach any objections to the contract terms and conditions outlined in Section VI.B. or the **Preliminary Contract, Exhibit C**.

Only those extraneous terms that meet all the following requirements will be considered as having been submitted as part of the proposal:

- Each proposed extraneous term (addition, counter-offer, deviation or modification) must be specifically enumerated in writing which is not part of a pre-printed form; and
- The writing must identify the particular term to which the Bidder objects or proposes to modify by inclusion of the extraneous term and the reasons therefore.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents), whether or not deemed "material", which are attached or referenced with submissions which do not meet the above requirements will not be considered part of the bid or resulting contract, but rather will be deemed to have been included for informational or promotional purposes only.

Acceptance and/or processing of the bid proposal shall not constitute such written acceptance of Extraneous Term(s) or a waiver of the Department's right set forth in Section V. Failure to object to any terms identified in Section VI of this RFP and the **Preliminary Contract, Exhibit C**, shall be deemed to constitute acceptance thereof by the Bidder.

## **20. Request for Exemption from Disclosure**

The bids are presumptively available for public inspection. If this would be unacceptable to Bidders, they should apply to the Department for trade secret protection of their bid.

In applying for trade secret protection, it would be unacceptable to indiscriminately categorize the entire proposal as such. The Bidder should point out those sections of the proposal that are trade secrets and explain the reasons therefore. The Bidder may wish to review with its legal counsel Restatement of Torts, Section 757, comment b, and the cases under the Federal Freedom of Information Act, 5 USC Section 522, as well as the Freedom of Information Act. The Department will review applications and grant trade secret protection, if appropriate.

### **Response Requirements**

To obtain trade secret protections, the Bidder must submit with its response, a letter specifically identifying the page number, line or other appropriate designation of the information that is trade secret and explain in detail why such information is a trade secret and would be exempt from disclosure.

## **21. Iran Divestment Act**

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

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

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

## VII. Proposal Submission

The Bidder must provide a response that clearly and precisely provides all required information. Emphasis should be placed on conformance with the RFP instructions, responsiveness to the RFP requirements and clarity of the intent.

Proposals that do not comply with these instructions or do not meet the full intent of all of the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

The Department does not require, nor desire, any excessive promotional material which does not specifically address the response requirements of this RFP.

If the Bidder is submitting proposals for multiple geographical locations, a **separate bid package must be submitted for each geographical location following the content and organization guidelines below.**

### A. Proposal Content and Organization

To facilitate in the evaluation process, the Bidder must organize the proposal into **three distinct volumes** as follows:

Volume One: Qualifying and Technical Requirements

Volume Two: Administrative Requirements

Volume Three: Financial Requirements

#### 1. Volume One format

Volume One should contain a table of contents with page numbers and each section should be tabbed as follows:

- a. Tab 1 – Executive Summary
- b. Tab 2 - Qualifying Requirements
- c. Tab 3 – Technical Requirements

#### 2. Volume Two Format

- a. Tab 1 – Cover Letter
  - Extraneous terms, if applicable
  - Request for exemption from Disclosure, if applicable
- b. Administrative Response Forms

3. Volume Three Format

This volume must contain the Financial Proposal.

**B. Submission of Proposals**

The Bidder must submit two originals and three copies of Volume One: Qualifying and Technical Requirements and two originals and two copies of Volume Two: Administrative Requirements and Volume Three: Financial Requirements. **All volumes must be bound separately**, be clearly identified and should contain page numbers.

Proposals must be received by the date and time specified in the Schedule of Events.

To facilitate the evaluation process, the proposal must be packaged and submitted as outlined in this section. Faxed or electronically transmitted proposals **will not** be accepted.

Bidder proposals must be enclosed in sealed containers with the following visibly inscribed on the outside of all containers:

New York State Department of Taxation and Finance  
Attn: Catherine Golden, Director  
Procurement Services Unit  
Office of Budget and Management Analysis  
W. A. Harriman State Office Building Campus  
Albany, NY 12227

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

“BID ENCLOSED”  
RFP 12-02  
Storage and Auction Services  
Bid Submission Date and time

**Please note: Deliveries by delivery services (e.g. UPS, FedEx, etc.) and/or requiring a signature of receipt should be addressed to the Department’s Campus address, however, the delivery service must be instructed to deliver the bid documents to the following address:**

90 Cohoes Avenue  
Green Island, NY 12183

Only under circumstances identified in Section VI. A. 16, will the Department consider any proposals received after the time and date specified in the Schedule of Events. In the event a package is not labeled properly as described in this Section, the Department reserves the right to inspect the contents of the package(s) to determine the contents. The Bidder shall have no claim against the Department arising from such inspection and such inspection shall not affect

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the validity of the procurement. Notwithstanding, the Department's right to inspect the contents of the package(s), the Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

## VIII. Proposal Evaluation

Pursuant to Article XI of the State Finance Law, the basis for contract award under this RFP will be “best value;” optimizing quality, cost and efficiency among responsive and responsible Bidders.

### 1. Proposal Clarification

The Department reserves the right to require a Bidder to provide clarification and validation of its proposal through any means the Department deems necessary. Failure of a Bidder to cooperate with the Department efforts to clarify or validate proposal information may result in the proposal being labeled as non-responsive and given no further consideration.

### 2. Evaluation Process Overview

There will be three phases to the evaluation process. Proposals which pass Phase One of the evaluation will be further evaluated in Phase Two.

#### a. Phase One Evaluation

All timely submitted proposals will be evaluated in Phase One. Proposals will be evaluated in the following areas:

##### i. Proposal Screening (Pass/Fail)

Each proposal will be screened for completeness and conformance with the Department requirements for proposal submission as specified in this RFP. Proposals which do not meet the requirements may be labeled as non-responsive and may not be given further consideration.

##### ii. Qualifying Requirements

All proposals that pass the Proposal Screening will be evaluated to determine if the Bidder meets the Qualifying Requirements specified in **Section III: Qualifying Requirements**. If all Qualifying Requirements are not met, the Bidder’s proposal will be labeled non-responsive and will not be given further consideration.

All proposals that pass this stage of the evaluation process will be further evaluated in Phase Two.

#### b. Phase Two Evaluation

Bidders who pass Phase One of the evaluation will be further evaluated as follows:

##### i. Technical Evaluation (60 points)

Technical points will be allocated in the following order of importance:

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- Secure Facility \*
- Auction Frequency
- Property Inventory System
- Web Presence
- Other Services
- References

\*The Department reserves the right to inspect the secure facility to confirm it meets the Departments needs.

ii. Financial Evaluation (40 Points)

Bidders cost proposals will be scored concurrently and separately from the Technical evaluation.

At the completion of Phase Two, the technical and financial scores will be combined to determine the Bidder ranking.

**3. Final Ranking/Contract Award**

The contract will be awarded to the Bidder whose proposal obtains the highest aggregate score.

The table below summarizes the evaluation point distribution:

Evaluation Component	Points
Technical Evaluation	60
Financial Evaluation	40
TOTAL	100

In the event that Bidders receive the same final score, the Department will use the following tie breaking mechanisms, in the order listed, to determine final ranking:

- The Bidder's Financial Score
- Secure Facility Score

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- Auction Frequency Score
- Determination by the Commissioner.

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**Exhibit A – Contractor Sales Tax Certification Forms**



New York State Department of Taxation and Finance

**Contractor Certification**

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

**ST-220-TD**

(12/11)

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

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

**General information**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

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

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

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

Mail completed form to:

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

**Privacy notification**

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

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

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

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

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

**Need help?**



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

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



**Telephone assistance**

Sales Tax Information Center: (518) 485-2889

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

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



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

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Page 2 of 4 ST-220-TD (12/11)

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

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

**Section 1 — Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 — Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 — Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*





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New York State Department of Taxation and Finance

**Contractor Certification to Covered Agency**  
(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

**ST-220-CA**  
(12/11)

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

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

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name) (title)

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

*(Mark an X in only one box)*

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
*(insert contract number or description)*
- and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*

**Instructions**

**General information**

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

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

**When to complete this form**

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

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

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



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**Exhibit B – New York State Office of the State Comptroller Substitute Form W-9**

AC 3237-0 (Rev. 1/12)

	<b>NEW YORK STATE OFFICE OF THE STATE COMPTROLLER SUBSTITUTE FORM W-9: REQUEST FOR TAXPAYER IDENTIFICATION NUMBER &amp; CERTIFICATION</b>										
<i>TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.</i>											
<b>Part I: Vendor Information</b>											
1. Legal Business Name:	2. If you use a DBA, please list below:										
3. Entity Type (Check one only): <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> <b>1. Legal Business Name</b> Business Corporation <input type="checkbox"/> Unincorporated Association/Business <input type="checkbox"/> Federal Government <input type="checkbox"/> State Government <input type="checkbox"/> Public Authority <input type="checkbox"/> Local Government <input type="checkbox"/> School District <input type="checkbox"/> Fire District <input type="checkbox"/> Other _____											
<b>Part II: Taxpayer Identification Number (TIN) &amp; Taxpayer Identification Type</b>											
1. Enter your TIN here: (DO NOT USE DASHES)											
<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 12.5%;"></td> </tr> </table>											
2. Taxpayer Identification Type (check appropriate box): <input type="checkbox"/> Employer ID No. (EIN) <input type="checkbox"/> Social Security No. (SSN) <input type="checkbox"/> Individual Taxpayer ID No. (ITIN) <input type="checkbox"/> N/A (Non-United States Business Entity)											
<b>Part III: Address</b>											
1. Physical Address:	2. Remittance Address:										
Number, Street, and Apartment or Suite Number	Number, Street, and Apartment or Suite Number										
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country										
<b>Part IV: Exemption from Backup Withholding and Certification</b>											
For payees exempt from Backup Withholding, check the box below. Valid explanation required for exemption. See instructions. <input type="checkbox"/> <b>Exempt from Backup Withholding</b>											
The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding. Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (TIN).											
Sign Here:											
_____	_____										
Signature	Date										
Print Preparer's Name	Phone Number                      Email Address										
<b>Part V: Contact Information – Individual Authorized to Represent the Vendor</b>											
Vendor Contact Person:	Title:										
Contact's Email Address: _____	Phone Number: _____										
<b>DO NOT SUBMIT FORM TO IRS – SUBMIT FORM TO NYS ONLY AS DIRECTED</b>											
<b>FOR OSC USE ONLY</b>											

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AC 3237 (12/09)

**NYS Office of the State Comptroller  
Instructions for Completing Substitute W-9**

New York State (NYS) must obtain your correct Taxpayer Identification Number (TIN) to report income paid to you or your organization. NYS Office of the State Comptroller uses the Substitute Form W-9 to obtain certification of your TIN in order to ensure accuracy of information contained in its payee/vendor database and to avoid backup withholding.<sup>1</sup> We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States. You are required to give us the information.

Any payee/vendor who wishes to do business with New York State must complete the Substitute Form W-9. Substitute Form W-9 is the only acceptable documentation. We will not accept IRS Form W-9.

**Part I: Vendor Information**

1. **Legal Business Name:** For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **DBA (Doing Business As):** Enter your DBA name.
3. **Entity Type:** Mark the Entity Type doing business with New York State.

**Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type**

1. **Taxpayer Identification Number:** Enter your nine-digit Social Security Number, Individual Taxpayer Identification Number (ITIN)<sup>2</sup> or Employer Identification Number.
2. **Taxpayer Identification Type:** Mark the type of identification number provided.

**Part III: Address**

1. **Physical Address:** List the location of where your business is physically located.
2. **Remittance Address:** List the location where payments should be delivered.

**Part IV: Exemption from Backup Withholding and Certification**

Generally, reportable payments made by New York State are subject to Backup Withholding. Exemption from Backup Withholding applies to government and non-United States Business Entities<sup>3</sup>. Please sign, date, provide the preparer's name, telephone and email address. The preparer should be employed by your organization.

**Part V: Contact Information**

Please provide the contact information for an executive at your organization. This individual should be a person who makes legal and financial decisions for your organization.

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<sup>1</sup> According to IRS Regulations, OSC must withhold 28% of all payments if a payee/vendor fails to provide OSC its certified TIN. The Substitute Form W-9 certifies a payee/vendor's TIN.

<sup>2</sup> An ITIN is a nine-digit number used by the United States Internal Revenue Service for individuals not eligible to obtain a Social Security Number, but are required to file income taxes. To obtain an ITIN, submit a completed W-7 to the IRS. The IRS will notify you in writing within 4 to 6 weeks about your ITIN status. In order to do business with New York State, **you must submit IRS Form W-8** along with our Substitute Form W-9 showing your ITIN. IRS Form W-8 certifies your foreign status. To obtain IRS Forms W-7 and W-8, call 1-800-829-3676 or visit the IRS website at [www.irs.gov](http://www.irs.gov).

<sup>3</sup> In order to do business with New York State, **you must submit IRS Form W-8** along with our Substitute Form W-9. IRS Form W-8 certifies your foreign status and exempts you from United States information return reporting and backup withholding rules. To obtain IRS Form W-8, call 1-800-829-3676 or visit the IRS website at [www.irs.gov](http://www.irs.gov).

### Exhibit C – Preliminary Contract

**THIS AGREEMENT** made this XX day of XXX by and between the New York State Department of Taxation and Finance, located at Building 9, W.A. Harriman State Office Campus, Albany, New York 12227 (hereinafter referred to as the “Department”, “DTF”) and [Contractor Name], with principal place of business located at [Contractor Address] (hereinafter referred to as the “Contractor”).

**WHEREAS**, the Department issued Request for Proposal (RFP) 12-02 on [RFP Issuance Date], for Storage and Auction Services; and

**WHEREAS**, the Contractor timely submitted a bid proposal to provide the services set forth in RFP 12-02; and

**WHEREAS**, pursuant to **Section VIII** of said RFP, the Contractor was determined to have the highest ranking proposal and has been determined capable of providing the required services, and

**WHEREAS**, the Contractor is prepared to undertake performance of Storage and Auction Services according to the terms of this Agreement, and recognizes that turnover of functions to the Department or at the direction of the Department, to a successor Contractor is a fundamental requisite of such undertaking.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein set forth, the parties hereto agree as follows:

#### Article I. Definitions

The following terms when used herein shall have the specified meanings:

**Agreement** means this Contract C4006XX, which includes all documents identified in **Article II: Entirety of Agreement**.

**Attorney General** means the Attorney General of the State of New York, or designee.

**Base Contract** means that portion of the Agreement preceding the signatures of the parties in execution.

**Contractor** means [successful Bidder’s name to be inserted here].

**Department** means the New York State Department of Taxation and Finance.

**Dispute Resolution** means the process set forth in Article X for resolving disputes arising under this Agreement.

**OSC** means the New York State Office of the State Comptroller.

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**Proposal** means the Proposal submitted by Contractor in response to RFP 12-02 including Volume 1 (Qualifying and Technical Requirement Response Forms), Volume 2 (Administrative Requirements Response Forms) and Financial Response Form dated XXXXXXXX, and any written clarifications thereto made by Contractor. The Proposal is attached hereto as Appendix 1.

**RFP** means the Storage and Auction Services Request for Proposals issued by the Department on *[Issuance Date]* 12-02 including all appendices and exhibits contained therein, and any written clarifications or amendments thereto made by DTF. The RFP is attached as Appendix 2.

**Subcontractor** means any individual or other legal entity including, but not limited to, sole proprietor, partnership, limited liability company, firm or corporation who is engaged by the Contractor or another subcontractor to perform a portion of the Contractor's obligation under a contract.

### **Article II. Entirety of Agreement**

This Contract C4006XX shall consist of the documents listed below, which are fully incorporated by reference. In the event of a conflict between or among the provisions of the Contract, such conflict shall be resolved by reference to the documents in the order listed with Appendix A having precedence:

Appendix A of the RFP, "Standard Clauses for New York State Contracts" dated December 2011;

Attachment 11 of the RFP – Secrecy Provisions Agreement (DTF-202);

Base Contract;

Amendments and Clarifications to the RFP, including Questions and Answers;

Department's RFP, excluding Appendix A, and Attachments 11;

Contractor Proposal Clarifications; and

Contractor Proposal, excluding clarifications.

### **Article III. Contractor Responsibilities**

The Contractor hereby agrees to provide all services as set forth herein and in 12-02 and the Contractor's bid proposal in response to said RFP.

The Contractor will comply with the Secrecy requirements set forth in Article VII herein.

The Contractor must not disclose the data provided by the Department to any other individual or entity except as expressly provided by law. The data provided, while in the custody of the Contractor, must be kept confidential, and the Contractor must take all reasonable and prudent steps to ensure the data is fully protected and secured.

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The Contractor shall pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all federal, State, and local, laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract.

The Contractor shall comply with the provisions of Sections III. B. and IV. G of RFP 12-02 entitled Insurance. DTF's acceptance or approval of the Certificate of Insurance required thereunder shall not diminish any of Contractor's obligations, responsibilities or liabilities hereunder.

*Additional responsibilities to be determined during Contract negotiations.*

#### **Article IV. Department Responsibilities**

In addition to the Department's responsibilities set forth elsewhere in this agreement, the Department shall:

- a. Promptly designate the DTF Leadership Team, Project Director and DTF Project Managers following the date of commencement of this agreement;
- b. Cooperate with the Contractor to utilize, where necessary, informal dispute resolution as well as the formal dispute resolution process to facilitate the timely resolution of disputes that arise;
- c. Be responsible for the performance of its employees and agents;

#### **Article V. Contract Term**

The Contract term will be for a three year period with two, one year renewals. Renewals shall be accomplished through written amendment with the mutual agreement of the parties. This Contract, and any renewals, requires the approval of the Offices of the New York Attorney General (AG) and the New York State Comptroller (OSC). The initial term of the Contract shall commence upon approval of OSC.

#### **Article VI. Fees and Payment**

The fees set forth in Attachment 14, Financial Proposal shall not be increased during the first year of any contract resulting from this RFP. Thereafter, any proposed increase must be requested by the Contractor in writing sixty (60) days in advance of the anniversary date of the Contract. Such increase shall be subject to negotiation between the Department and the Contractor. Notwithstanding the foregoing, rate increases for subsequent years shall be limited to the percentage change in the Consumer Price Index for All Urban Customers, table A, as reported by the Department of Labor, Bureau of Statistics for the CPI-U for the preceding twelve (12) month period.

If the renewal option is exercised, rate increases shall also be limited to the percentage change in the Consumer Price Index for All Urban Customers, table A, as reported by the U.S. Department of Labor,

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Bureau of Statistics for the CPI-U for the preceding twelve (12) month period or five percent (5%), whichever is smaller.

Payment for invoices submitted on this contract may be made utilizing any one or a combination of VISA procurement card or electronic payment/check.

Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

#### **Article VII: Secrecy Provisions**

##### **A. Required Forms**

The Contractor will require each employee and/or subcontractor assigned to this Agreement to sign form **DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code** as set forth in **Attachment 11** of the RFP. The form will be retained by the Contractor and provided to the Department upon request.

##### **B. New York State Department of Taxation and Finance 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. Bidder representatives must comply with the administrative procedures enforcing these rules.

The Contractor, all staff members and subcontractors 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 the Public Officers Law.

##### **C. Information Security Breach and Notification Act**

Contractor expressly agrees to comply with the provisions of Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 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 the Department under this Agreement (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 the Department upon discovery or notification of such breach. Such notice to the Department shall be made by contacting the Department’s Information Security Office by email to: [Information\\_Security\\_Office@tax.ny.gov](mailto:Information_Security_Office@tax.ny.gov). Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and to restore the security of the system. To the extent the Department determines that further notifications are required to be sent out pursuant to the Act, Contractor shall be responsible for providing such 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 the Department 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 the Department shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a breach of the security of the Department Information. Nothing contained herein shall be interpreted as reducing or altering Contractor’s obligations under section 899-aa of the General Business Law.

#### **Article VIII. Reserved Rights**

In addition to such other rights as allowed under this Agreement, the Department reserves the following rights:

The Department shall have the right to send its officers and/or employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be non-compliant with contract safeguards. Such determination shall be made at the sole discretion of the Department.

The Department shall have the right to require the removal of any Contractor staff assigned to this project for work related cause upon written notification to the Contractor. Such notification shall set forth the reasons for the request for removal. In such event, Contractor shall promptly provide a substitution.

The Department reserves the right to request a copy of Federal Form I-9, Employment Eligibility

Verification, for each individual assigned to work at the Department under this contract, if the Contractor is so legally obligated to obtain and retain such Form I-9. The social security number of the employee, if listed on Form I-9, shall be redacted from the form.

#### **Article IX. Performance Standards and Remedies**

If it is determined that the Contractor is in violation of any terms or conditions set forth in this contract, the Department reserves the right to take any one or more of the following actions it deems appropriate, at its sole discretion: 1) contract termination, 2) non-renewal of the Contract, 3) removal of the specific Contractor employee 4) withholding of \$1,000 per instance from the Contractor's fees set forth in Article VI. The taking of any such action shall not give rise to any cause of action against the Department for any kind of damages, loss of profits, expenses, or other remuneration of any kind.

#### **Article X. Dispute Resolution**

The first step of dispute resolution will be through conference between the Department and the Contractor. The party initiating the process shall notify the other party in writing and set forth the issues for resolution and provide all necessary documentation. Unresolved disputes will be resolved by the Commissioner of Taxation, or his designee, whose decision is final and binding. During this period all work required hereunder shall be performed. If the Contractor pursues any legal or equitable remedy outside the Department, the Contractor will continue to perform work in accordance with the direction of the Department until such proceedings may be concluded and will continue to be paid, less an amount attributable to the disputed work. Disputes that go to litigation must be pursued in a court of competent jurisdiction of the State of New York. New York law will govern the dispute and venue must be laid in Albany County, New York.

#### **Article XI. Continuing Administrative Requirements**

##### **Vendor Responsibility**

During the contract term, Contractor agrees to evidence vendor responsibility substantially similar to, or superior to, its status as of the execution of this Agreement as a material condition of the same. Contractor further agrees to notify DTF promptly of any material change in vendor responsibility or of a change in ownership. Additionally, Contractor acknowledges that a review of vendor responsibility shall be undertaken prior to any renewal hereunder and that the Department reserves the right to undertake such a review annually upon the anniversary date of this Agreement.

##### **Sales and Compensating Use Tax**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify, to the Department of Taxation and Finance (DTF), that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods

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immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law also imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use taxes and Contractors must certify to DTF that each affiliate and subcontractor exceeding the \$300,000 sales threshold referenced above is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a Contract awarded to a Contractor meeting the registration requirements but who has not registered in accordance with the law.

**Procurement Lobbying**

Pursuant to State Finance Law §§139-j and 139-k, there are certain restrictions on communications between a Governmental Entity and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts during the 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).

If this Agreement is renewed or amended, Contractor shall be subject to the Procurement Lobbying requirements set forth herein and shall submit such updated Procurement Lobbying forms as are required by the Department.

**Iran Divestment Act**

By entering into this Contract, Contractor certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before DTF may approve a request for Assignment of Contract.

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

DTF reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

**Participation By Minority Group Members and Women With Respect To State Contracts:**

**Requirements and Procedures**

**1. General Provisions**

- A. The New York State Department of Taxation and Finance (DTF) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the DTF, to fully comply and cooperate with the DTF in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to paragraph 7 hereof or enforcement proceedings as allowed by the Contract.

**2. Contract Goals**

- A. For purposes of this procurement, the DTF hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises (“MWBE”) participation for subcontractors and suppliers; 0% for Minority-Owned Business Enterprises (“MBE”) participation and 0% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in paragraph 2-A hereof, Contractor should reference the

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directory of New York State Certified MBWEs found at the following internet address:  
<http://www.esd.ny.gov/mwbe.html> .

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the DTF for liquidated or other appropriate damages, as set forth herein.

**3. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to the DTF within seventy two (72) hours after the date of the notice by DTF to award the Contract to the Contractor.
  3. If Contractor or Subcontractor does not have an existing EEO policy statement, the DTF may provide the Contractor or Subcontractor a model statement (**see Exhibit D of RFP**).
  4. The Contractor’s EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities

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without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
- c. 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.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section 3, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. RFP Attachment 4 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. RFP Exhibit E - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the DTF of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **4. MWBE Utilization Plan - if applicable**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section 2-A of this section, if applicable.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan, if applicable, shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DTF shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### **5. Waivers**

- A. For Waiver Requests Contractor should use **M/WBE 104, Request for Waiver Form, if applicable.**
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the DTF shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the DTF, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the

Contract goals and no waiver has been issued in regards to such non-compliance, the DTF may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **6. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a **Quarterly MWBE Contractor Compliance Report, if applicable**, to the DTF by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **7. Liquidated Damages - MWBE Participation – if goals greater than 0% are established**

- A. Where DTF determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the DTF liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DTF, Contractor shall pay such liquidated damages to the DTF within sixty (60) days after they are assessed by the DTF unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the DTF.

### **Article XII. Termination**

#### **Termination for Cause**

In addition to the termination rights set forth in this Agreement, the Department reserves the right to terminate the contract immediately upon written notice as follows:

If the Contractor fails to perform its obligations as set forth in Article VII (Secrecy), this Agreement may be cancelled immediately upon written notice. At its sole discretion, the Department may elect not to allow a cure period for such failure.

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Otherwise, if the Contractor fails to perform its material obligations under this contract and does not, within ten calendar days after receiving written notice from the Department describing the alleged material failure, either,

1. Cure the material failure; or
2. If the material failure is one that cannot be reasonably cured within 10 calendar days after receiving written notice from the Department then the Department may either terminate this Agreement, in whole or in part, and pursue available remedies, subject to the limitations contained in Article XIII (Indemnification and Limitation of Liability) or extend the time of the cure period.

For purposes of this Article, material failure to perform by the Contractor is a failure to perform an obligation that the Contractor is bound to perform under this Agreement which is so fundamental to the Agreement that the failure to perform the obligation defeats the purpose of the Agreement. Material failure to perform by Contractor shall include, but not limited to:

1. Failure to meet the obligations and responsibilities imposed on the Contractor by Article III.
2. Breach of a material term or condition of any subcontract by Contractor or the subcontractor, if such breach materially impairs Contractor's performance under this Agreement with the reasonable likelihood that a material failure to perform by the Contractor will occur.
3. Contractor is or becomes insolvent or a party to any bankruptcy or receivership proceeding, or any similar action affecting the affairs or property of Contractor.
4. Failure of the Contractor to remain a responsible Contractor consistent with applicable New York State law, regulations and/or policy.
5. A finding that the certification filed by the Contractor in accordance with Procurement Lobbying was intentionally false or intentionally incomplete.
6. A finding that the information filed by the Contractor in accordance with the requirements for Vendor Responsibility is incomplete, untrue or inaccurate.
7. Failure of Contractor to maintain vendor responsibility substantially similar to, or superior to, its status as of the execution of this Agreement.
8. A finding that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law was not timely filed during the term of the Contract or the Certification filed was intentionally false or intentionally incomplete.

If it is subsequently determined for any reason that the Contractor was not in material default or that the Contractor's failure to perform or make progress in performance was due to causes beyond the control and without the fault or negligence of the Contractor, the Department shall have the option, at its sole discretion, to either deem the Notice of Termination to have been issued hereunder to as a termination for convenience of the Department or allow the Contractor to resume performance under the Agreement without an increase in cost.

In the event of termination by DTF for default by Contractor pursuant to this Article, Contractor shall be liable for DTF's direct damages resulting from such material breach, subject to the limitations and exclusions contained in Article XIII (Indemnification and Limitation of Liability).

#### **Termination for Convenience**

The Department may terminate this contract in whole or in part at any time for convenience upon thirty days written notice to the Contractor without penalty or other early termination charges due.

#### **Procedure for Termination**

In the event of termination for cause or convenience, the parties agree to cooperate in a manner to effect an orderly termination of the Contract. In the event of termination for any reason, the Contractor will be reimbursed for all services performed up to the date of termination.

### **Article XIII. Indemnification and Limitation of Liability**

#### **A. 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

#### **B. Limitation of Liability**

Contractor will be liable to DTF for all actual damages incurred as a direct result of Contractor's failure to exercise reasonable care in providing the Services and performing its obligations under this Agreement, provided, Contractor's liability will not exceed Two Million Dollars (\$2,000,000) per year and provided, however, that such dollar cap shall not apply to damages resulting from Contractor's (i) willful, malicious, intentional misconduct, (ii) intentional tortious conduct, or (iii) gross negligence.

NOTWITHSTANDING THE FOREGOING, CONTRACTOR REMAINS LIABLE, WITHOUT MONETARY LIMITATION, FOR DIRECT DAMAGES FOR PERSONAL INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY OR INTELLECTUAL PROPERTY ATTRIBUTABLE TO THE NEGLIGENCE OR OTHER TORT OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS.

#### **C. Force Majeure**

Neither the Department or the Contractor shall be responsible to the other for a delay resulting

from its failure to perform if neither the fault nor negligence of the Department or the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fire or floods, or other similar causes beyond the control of either party, or for any of the foregoing which affects subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, the aggrieved party shall notify the other party, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten calendar days after the cause which creates or will create the delay first arose if the aggrieved party could reasonably foresee that a delay could occur by reason thereof, or (b) if the delay is not reasonably foreseeable, within five calendar days after the date the aggrieved party first had reason to believe that a delay could result. The foregoing shall constitute the aggrieved parties sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given to the other party, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Department that the delay will significantly impair the value of the Contract to the Department. In the event of such determination, the Department may immediately terminate the contract with written notice.

**D. 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).

**Article XIV: General Terms and Conditions**

**Invariable Terms and Conditions**

**Appendix A**

The Contractor has read and agrees to Appendix A (Standard Contract Clauses), which is incorporated as part of the Agreement without revision.

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

**Payment Records**

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The Contractor must maintain adequate records as prescribed by the Department to substantiate all claims for payment and must make those records available in New York State for examination and copying.

**Governing Law**

The laws of the State of New York shall be the law that shall govern the interpretation or application of any of the terms or conditions of this Agreement.

**Required Approval**

This Agreement and any amendments will not be effective until approval by the Office of the Attorney General and the Office of the State Comptroller.

**Funding**

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.

Accordingly, this Agreement will be performed only as long as the legislature appropriates funds and the Governor allocates such funds to the Department. Failure of New York State to execute a Budget timely may result in the Department being unable to reimburse the Contractor for services provided in the new fiscal year. All work approved and accepted by the Department will subsequently be reimbursed when the Budget has been executed.

**Assignment of Rights and Duties**

The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or its right, title or interest therein, or its power to execute such Agreement to any other person, company, firm or corporation in performance of the Agreement, other than the assignment of the right to receive monies due hereunder, without the prior written consent of the Department. Prompt notice must be afforded the Department to effect the change of assignment through the Office of the State Comptroller.

The Department reserves the right to assign this Agreement to any New York State Agency provided that the assignee agrees in writing to be bound by the terms and conditions of this Agreement. The Department agrees to provide the Contractor, 30 day prior written notice of any such assignment.

### **Continuity of the Agreement**

The terms and conditions of this Agreement shall remain in full force and effect for the term of this Agreement and the Contractor agrees to provide all services for such term, regardless of any reorganizations, consolidations or mergers to which the Contractor is, or may become, a party.

Notwithstanding the foregoing, Appendix A, Article VII (Secrecy) and Article XIII (Indemnification and Limitation of Liability) shall survive the term of this Contract. The insurance requirement set forth in Article III herein shall extend six months beyond termination of this Agreement.

### **Cooperation with Third Parties**

The Contractor shall cooperate with all persons engaged in performing services for the Department, whether or not related to this Agreement, including, without limitation, Department officers and employees and third-party vendors engaged by the Department.

### **Severability**

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such provision, the remainder of this Agreement shall remain in full force and effect, and such term or provision shall be deemed null and void. In addition, if any provision of the Agreement, for any reason, is declared to be unenforceable, the parties shall make a reasonable effort to substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

### **Conflict of Interest**

If during the term of this Contract, and any extensions thereof, the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. The Contractor will be responsible for establishing procedures to identify potential conflicts of interest. The Contractor must immediately notify the Department in writing and disclose the nature of the potential conflict of interest in the manner prescribed by the Department. The Department will have sole discretion in evaluating the nature of the identified conflict of interest and will make the final decision regarding its resolution.

## **Subcontractors**

The State reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labor's list of companies with which New York State cannot do business; or the Department determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided.

Contractor may subcontract to subcontractors selected by Contractor, for services performed in connection with this Contract, subject to the Department's prior written approval. A subcontractor shall be defined as any firm or person who is not a full time employee of the Contractor, engaged or assigned to perform work under the Contract. All agreements between the Contractor and its subcontractors shall be by bona fide written contract.

Contractor shall include in all subcontracts for the services performed in connection with this Contract, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions consistent with those found in the Contract, including, but not limited to:

- That the work performed by the subcontractor must be in accordance with the terms of the Contract including, but not limited to, Appendix A;
- That subcontractor shall comply with the provisions of section 5-a of the Tax Law and all Secrecy provisions;
- That nothing contained in such subcontract shall impair the rights of the Department;
- That nothing contained herein shall create any contractual relation between any subcontractor and the Department;
- That subcontractor shall maintain all records with respect to work performed under the subcontractor in the same manner as required of the Contractor; and
- That the DTF shall have the same authority to audit the records of all subcontractors as it does those of the Contractor.

Contractor shall be fully responsible to the Department for the acts and omissions in the performance of services under the Contract of the subcontractors and/or persons either directly or indirectly employed by it or by the subcontractors, as it is for the acts and omissions in the performance of services under the Contract or persons directly employed by the Contractor. Contractor shall not in any way be relieved of any financial, programmatic or service responsibility under the Contract by its agreement with any subcontractor or by the Department's approval of such an agreement with a subcontractor.

## **Other Agency Use**

The terms and conditions of this Agreement may be extended to any other New York State agency through the use of a formally executed agreement between the Contractor and the state

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agency subject to review and approval of the Office of the Attorney General, and the Office of the State Comptroller.

**Publicity**

To the extent allowable by law, neither party shall, at any time, during or after termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement without the prior written approval of the other party.

Neither party grants the other the right to use any of its trademarks, trade names, logos, seals, or other designations, whether in any promotion, publication, or otherwise, without the other party's prior written consent.

**Independent Contractor**

It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor and in no manner shall they be deemed employees of the Department, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of the Agreement, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**Authorized Representatives**

**Notice of Termination**

Where Notice of Termination is to be provided by the Department to the Contractor, the Department shall deliver such notice to each of the following individuals:

*To be Provided*

**Execution of Contract Documents**

Where a Provision of this Agreement calls for execution of a contract document, the individuals authorized to execute documents:

On behalf of the Department are:

- Commissioner
- Executive Deputy Commissioner
- Chief Financial Officer
- Director, Procurement Services Unit

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On behalf of the Contractor are:

*-To be Provided*

**Notices**

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- a. via certified or registered United States mail, return receipt requested;
- b. by facsimile transmission;
- c. by personal delivery;
- d. by expedited delivery service; or
- e. by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**Notices to the Department from the Contractor:**

Ms. Catherine Golden, Director  
New York State Department of Taxation & Finance  
Procurement Services Unit  
Office of Budget and Management Analysis  
W.A. Harriman Campus  
Albany, NY 12227

**Notices to the Contractor from the Department:**

*To be Provided*

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

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

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**[Contractor Name]**

**New York State Department of Taxation and Finance**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney General

\_\_\_\_\_  
Office of the State Comptroller

CORPORATION

STATE OF

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_,

to me known, who being duly sworn, did depose and state that he/she resides in \_\_\_\_\_;  
that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the Corporation described  
in and which executed the foregoing instrument; that he/she knows the seal of said Corporation; that the seal affixed to said instrument is such  
corporate seal, that it was so affixed by the order of the Board of Directors of said Corporation, and that he/she signed his/her name thereto by  
like order.

\_\_\_\_\_  
NOTARY PUBLIC

## Exhibit D – Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement

### M/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

#### M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- 1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- 2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- 3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- 4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- 5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- 6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

#### EEO

- a. This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- b. This organization shall state in all solicitation 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 disability or marital status.
- c. At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organizations' obligations herein.
- d. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- e. This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract. .

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Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2

By \_\_\_\_\_

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

**Minority Business Enterprise Liaison**

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison

(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_0\_\_% Minority Business Enterprise Participation

\_\_0\_\_% Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ %Female Labor Force Participation

\_\_\_\_\_

(Authorized Representative)

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

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

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**Exhibit E - Work Force Employment Utilization**

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Contractor's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Contractor's Address:</b>		

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification										Disabled		Veteran	
		Male (M)	Female (F)	White		Black		Hispanic		Asian		Native American					
		(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary/Apprentices																	
Totals																	

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	<b>Submit completed form to:</b> <b>NYS Department of Taxation and Finance</b> <b>M/WBE 102 (Revised 11/08)</b>	

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**General Instructions:** The work force utilization (M/WBE **102**) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**ISLANDER**

- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN Native)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** **Male** or **Female**

## Appendix A - 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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

**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.

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

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

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

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

**10. RECORDS** . The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should

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not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

- a. The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- b. at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative

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will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

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

**13. 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 Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical

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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 -- 7th Floor

Albany, New York 12245

Telephone: 518-292-5220

Fax: 518-292-5884

<http://www.empire.state.ny.us>

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

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enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

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

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by

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

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

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Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**December 2011**

## **Appendix B – DTF Bid Protest Policy**

It is the policy of the Department of Taxation and Finance contracting program (hereafter “DTF”) to provide all Bidders with an opportunity to administratively resolve complaints or inquiries related to bid solicitations or pending contract awards. DTF encourages Bidders to seek resolution of complaints concerning the contract award process through consultation with the program. All such matters will be accorded impartial and timely consideration.

### **Informal Complaints/Protests**

It is strongly recommended that staff encourage, be receptive to and resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. Information provided informally by any interested party should be fully reviewed by Program Team Leaders, the contract administrator of the Contract Management Unit and/or the Director, Procurement Services Unit, Office of Budget and Management Analysis. In addition, matters that are perceived to contain, or are potentially confidential or trade secret information should be shared with the Chief Financial Officer of the Office of Budget and Management Analysis for possible direction. Staff should document the subject matter and results of informal inquiries. As appropriate, DTF responses to the inquirer should indicate the existence of a formal protest policy available to them should the informal process fail to resolve the matter.

In addition to informal inquiries, Bidders may also file formal written protests according to the procedures specified below. Final agency determinations or recommendations for award generally may only be reconsidered in the context of a formal written protest.

### **Formal Written Protests**

Any potential Bidder who believes that there are errors or omissions in the procurement process, or that the Bidder has been aggrieved in the drafting or issuance of a bid solicitation or pending contract award, may present to a formal complaint to DTF and request administrative relief concerning such action (“formal protest”).

### **Submission of Bid or Award Protests**

#### **Deadline for Submission**

- a. Concerning Errors, Omissions or Prejudice in the Bid Specifications or Documents - Formal protests which concern the drafting of bid specifications must be received by DTF at least twenty (20) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than twenty (20) business days from the date of issue, formal protests concerning the specifications must be received by DTF at least seventy-two (72) hours before the time designated for receipt of bids.
- b. Concerning Proposed Contract Award - Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party (“protester”) knows or should have

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known of the facts which form the basis of the protest, and, where State Finance Law § 112 approval is required, prior to final approval of the recommendation by the State Comptroller.

**Transmittal**

A formal protest must be submitted in writing to DTF, by ground mail, or, where permitted in the solicitation, facsimile or e-mail transmission. The following statement must be clearly and prominently displayed on the envelope or package or header of electronic or facsimile transmittal: "Bid Protest of DTF Solicitation (Reference Number)."

**Contents**

A formal protest must include:

- a. a statement of all legal and/or factual grounds for disagreement with a specification or a procurement determination;
- b. a description of all remedies or relief requested; and
- c. copies of all applicable supporting documentation.

Protests should be delivered to the Contact named in the RFP.

**Review and Final Determination**

Copies of all protests will be provided to the Director, Procurement Services Unit, Office of Budget and Management Analysis and appropriate program staff.

Protests shall be resolved through written correspondence, however, either the protester or DTF may request a meeting to discuss a formal protest, at which time the participants may present their concerns. Where further formal resolution is required, the Director, Procurement Services Unit, Office of Budget and Management Analysis may designate an alternate ("designee") to determine and undertake the initial resolution or settlement of any protest.

The Program staff in conjunction with Contract Management Unit staff will conduct a review of the records involved in the protest, consult with the Director, Procurement services Unit, Office of Budget and Management Analysis, and provide a memorandum to the Chief Financial Officer of the Office of Budget and Management Analysis summarizing the results of the review and recommendation. The Chief Financial Officer of the Office of Budget and Management Analysis will evaluate the recommendation, the material presented by the protester, and, if necessary, consult with appropriate senior level program staff, Counsel, and the Executive Deputy Commissioner, and prepare a written response to the protest.

A copy of the decision, stating the reason(s) upon which it is based shall be sent to the protester or its agent within thirty (30) business days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest determination should be recorded and included in the

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Procurement Record, or otherwise forwarded to OSC upon issue. The decision of the Chief Financial Officer of the Office of Budget and Management Analysis will be final.

**Reservation of Rights and Responsibilities of DTF**

DTF reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and DTF.

If DTF determines that there are compelling circumstances, including the need to proceed immediately with contract award in the best interest of the State, then these protest procedures may be suspended and such determination shall be documented in the procurement record.

DTF will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

If a formal bid protest is received by DTF, a final determination on the protest must be made prior to OSC approval of the award under State Finance Law § 112. However, during the pendency of the protest, bid evaluation by DTF and subsequent OSC review of the recommended award may continue to progress at the discretion of the Chief Financial Officer of the Office of Budget and Management Analysis.

If a formal protest is received prior to a determination by DTF on a recommended award, notice of receipt of the protest must be given in the procurement record forwarded to OSC. If a final protest determination has been reached prior to transmittal to OSC, a copy of the final determination should be included in the Procurement Record and forwarded with the recommendation for award.

If a final protest determination is made after the transmittal of a bid package to OSC but prior to OSC approval under State Finance Law § 112, a copy of the final DTF determination shall be forwarded to OSC when issued, along with a letter either: a) confirming the original DTF recommendation for award and supporting the request for final State Finance Law § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final State Finance Law § 112 approval as modified; or c) withdrawing the original award recommendation.

All records related to formal Bidder protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.

## Attachment 1 – Bidders Checklist

### Volume 1

#### Qualifying Requirements

- Attachment A – Storage and Auction Experience Response Form
- Attachment B – Insurance Response Form
- Attachment C – Attestation

#### Technical and System Response Requirements

- Attachment D – Secure Facility Response Form
- Attachment E – Auction Frequency Response Form
- Attachment F – Web Presence Response Form
- Attachment G – Property Inventory System Response Form
- Attachment H – Other Services Response Form
- Attachment I – Reference Response Form
- Attachment J – Insurance Response Form

### Volume 2

#### Administrative Requirements

- Cover Letter
  - Proposed Extraneous Terms
  - Request for Exemption from Disclosure
- Attachment 4 – Staffing Plan
- Attachment 5 – Vendor Responsibility Response Form
- Attachment 6 – MacBride Fair Employment Principles Form
- Attachment 7 – Designation of Prime Contact
- Attachment 8 – Non-Collusive Bidding Certification
- Attachment 9 – Offerer Disclosure of Prior Non-Responsibility Determination
- Attachment 10 – Contractor Certification of Compliance with State Finance Law 139-k(5)
- Attachment 11 – DTF-202 Agreement to Adhere to Secrecy Provisions
- Attachment 12 – Subcontractor List
- Attachment 13 – Public Officers Law

### Volume 3

- Attachment 14 – Financial Proposal

## **Attachment 2 – Offerer 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:

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:

### Attachment 3 – Notification of Intent to Bid

Please indicate your interest in submitting a proposal for this acquisition by completing and returning this form to the Department by the date indicated on the Schedule of Events for this Request for Proposal.

Geographical Location Bid:

- Region 1a    Region 1b    Region 2a    Region 2b    Region 2c  
 Region 3a    Region 3b    Region 3c    Region 4    Region 5

Firm Name:

Authorized Signature:

Printed Name:

Title:

Telephone number:

Fax:

E-mail address:

Address:

Date:

Please check the appropriate line:

- We are interested in submitting a proposal.  
 We are a certified minority or woman owned business.  
 We are not interested in submitting a proposal for this service.

Reason:

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**Attachment 4 – Staffing Plan**  
**Submit with Bid or Proposal – Instructions on page 2**

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor
<b>Offeror's Address:</b>		<b>Subcontractor's name:</b>

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification														
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	

<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	<b>Submit completed with bid or proposal M/WBE 101 (Rev 11/08)</b>
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**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

10. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
11. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
12. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
13. Enter the total work force by EEO job category.
14. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
15. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OM/WBE Permissible contact(s) for the solicitation if you have any questions.
16. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
17. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

## Attachment 5 – Vendor Responsibility Response Form

Bidder's Name:

Bidders must complete a Vendor Responsibility Questionnaire in response to this RFP. Bidders are invited to file the required Vendor Responsibility Questionnaire online 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 online 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 [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@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 online 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 online and has not been certified within the last six months, the Bidder must either update/recertify the online questionnaire or submit a new paper Vendor Responsibility Questionnaire. Upon notification of award, the Contractor will be required to update/recertify the online questionnaire.

## Attachment 6 – MacBride Fair Employment Principles Form

**BIDDER'S NAME:**

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:**

### MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with Chapter 807 of the Laws of 1992, New York State, the Contractor, by submission of this bid, certifies that it and any individual or legal entity in which the Bidder holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership interest in the Bidder, either:

**(Answer Yes to one of the following, as applicable):**

Have no business operations in Northern Ireland:  Yes

*or*

Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity, and shall permit independent monitoring of their compliance with such Principles.

Yes

**Attachment 7 – Designation of Prime Contact**

The Bidder designates the following individual as the prime contact for this proposal and acknowledges that this individual is authorized to respond on behalf of the Bidder. This designation will last for the entire evaluation process and contract negotiations. Any request for change in the designated contact must be submitted in writing to the issuing officer designated on the cover of this RFP and must be accompanied by an updated form.

Firm Name:

Address:

New York State Statewide Financial System Vendor ID:

Prime Contact Name:            Title:

e-mail address:

Phone Number:            Fax:

Authorized Signature: \_\_\_\_\_

Printed Name:

Title:

Date:

## Attachment 8 – Non-Collusive Bidding Certification

In accordance with Section 139-d of the State Finance Law:

- a) By submission of this bid, Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
1. The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
  2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
  3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
    - A bid shall not be considered for award nor shall any award be made where (a), (1), (2), and (3) above have not been complied with; provided however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a), (1), (2), and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid was made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a Bidder has published price lists, rates, or tariffs covering items or services being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning stated above.

The Bidder certifies adherence to all conditions in the Bidding Practices subsection of this RFP.

Bidder's Name:

Bidder's Address:

Authorized Signature: \_\_\_\_\_

Name:

Title:

## **Attachment 9 - 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.

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

Procurement Description, Contract or Bid Number:

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? :

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? :

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? :

No  Yes

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? :

No  Yes

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

New York State Department of Taxation and Finance  
Request for Proposals (RFP) 12-02 Storage and Auction Services

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:

**Attachment 10 – 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:

## **Attachment 11 – DTF-202 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 department’s 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.

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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:

Address Street:

City:                      State                      ZIP code

**Attachment 12 – Public Officers Law**

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

**73 (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). 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:

### **Attachment 13 – Listing of Proposed Subcontractor’s Form**

Complete this form for the Subcontractor requirement as requested in section VIII. D. 10. The Bidder must identify all subs to be utilized for any resultant contract, their Employer Identification Number (EIN) and the services that they will perform.

<b>Subcontractor Name</b>	<b>EIN</b>	<b>Services to be performed</b>

*Expand form if necessary.*

**Attachment 14 – Financial Response Form**

This form is for the financial proposal requirement as requested in **Section V** of RFP 12-02. All costs associated with the requirements of the RFP must be incorporated into the Bidder’s financial response. **No other add-on costs are permitted.**

**Storage Fees:**

**Vehicle Seizures**

Item	Per Day Storage Fee Cost
Motor vehicle (ex. Car, motorcycle, truck, SUV, boat, etc.)	\$
Large Motor Vehicle (box truck, tractor trailer, boat, etc.)	\$
Recreational Vehicle (ATV, snowmobile)	\$

Is storage rate capped if vehicle proceeds to auction?  Yes  No

If yes, identify cap as either a number of days or dollar amount.

\_\_\_\_\_ days or \$ \_\_\_\_\_

**Business Seizures - (only applicable if the assets of the business seized must be moved to the Vendors facility)**

Per Day Square footage fee	\$
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New York State Department of Taxation and Finance  
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**Additional Services**

<b>Item</b>		<b>Cost</b>
<b>Mandatory Items:</b>		
	Vehicle Condition Report	\$
	Auction Value Appraisal	\$
	Keys	_____ % mark-up over cost
<b>Desirable Items:</b>		
	Vehicle Preparation Fee	_____ % mark-up over cost
	Filling Tires	\$ ____ per tire
	Charging Battery	\$ ____ per battery charge
	Replacing battery (note: this should be labor only, cost of the battery will be procured separately)	\$ ____ labor for replacing battery
Other available services		Cost must be presented as either a per unit cost or a percentage markup over cost.

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**Auction Services**

**Vehicle Auctions**

The Bidder must identify the fee for auction services below and include all expenses including, but not limited to, travel, advertising, etc.

- Buyers Premium only \_\_\_\_\_%; or
- Commission only \_\_\_\_\_%; or
- Combination Buyers Premium \_\_\_\_\_% and commission \_\_\_\_\_%

**Business Auctions**

The Bidder must identify the fee for auction services below which must be inclusive of all incidental expenses **EXCLUDING TRAVEL AND ADVERTISING**. Travel expenses for auctions held on site at the place of the seized business will be made in accordance with the New York State Office of the Comptroller Travel Guidelines found at: <http://www.osc.state.ny.us/agencies/travel/travel.htm>. Advertising fees must be a pass through expense.

Bidder affirms that the fees associated with Advertising will be a pass through expense.

- Yes       No

**Auction Fees:**

- Buyers Premium only \_\_\_\_\_%; or
- Commission only \_\_\_\_\_%; or
- Combination Buyers Premium \_\_\_\_\_% and commission \_\_\_\_\_%

Firm Name:

Authorized Signature: \_\_\_\_\_

Printed Name:

Title:

Federal ID #:

Date:

## Attachment A – Storage and Auction Experience Response Form

This form is for the Storage and Auction experience requirement as specified in Section III. A.

The bidder must have been in the business of providing storage services for government clients for a minimum of three years since September 1, 2007. For the purpose of this bid, a government client is defined as an entity at the city, county, state, provincial or national/federal level.

### AND

The Bidder or its subcontractor must have a minimum of three years experience providing auction services for government clients since September 1, 2007.

Furthermore the Department recognizes that new entities may form for the purpose of submitting a bid and that the new entity (which shall be considered the Bidder) may consist of existing entities. In such case, at least one such existing entity or its subcontractor must have three years experience providing storage services for a government client AND at least one such existing entity must have three years experience providing Auction Services for a government client since September 1, 2007.

1. Services Provided:

Storage Services     Auction Services

Date Bidder began providing services above:    /    /

Client Name:

Client Address:

Client Contact Name:

Client Phone Number: (    )    -    Client Fax Number: (    )    -

Client e-mail address:

Contract Start Date:    /    /    Contract End Date:    /    /

Work performed by a subcontractor:  Yes     No

Subcontractor Name:

*Attach additional sheets as necessary to support the three year requirement for both Storage Services and Auction Services.*

2. Auctioneer's License Number: \_\_\_\_\_

### **Attachment B – Insurance Response Form**

This form is for the Insurance requirement as specified in Section III. B.

#### Insurance Information

The Bidder must provide the following information regarding their insurance coverage:

Insurance Company Name:

Contact Name:

Address:

Phone Number: (    )    -

The Bidder must also attach a Certificate of Insurance demonstrating that the Bidder's company and all staff and subcontractor;s are insured against financial losses resulting from the Bidder's employees'/subcontractors' actions or other documentation to support thtis requirement. This certificate should include:

- A description of each type of coverage; and
- The amount of coverage for each type listed.

**Attachment C - Attestation**

This form is for the Attestation requirement as specified in Section III.C.

Geographical Location Bid:

Region 1a    Region 1b    Region 2a    Region 2b    Region 2c

Region 3a    Region 3b    Region 3c    Region 4    Region 5

The Bidder's signature below indicates the Bidder has read and agrees to provide the Scope of Services as defined in Section II of the New York State Department of Taxation and Finance Request for Proposal 12-02 for Storage and Auction services.

Firm Name:

Authorized Representative:

Representatives Signature: \_\_\_\_\_

Date:   /   /

**Attachment D – Secure Facility Response Form**

This form is for the Secure Facility Requirement in Section IV. A. Please complete the following information and attach a picture of the facility.

Name of Facility:

Location of secure facility:

Location is:  owned  leased, if leased end date of lease:    /    /

Maximum number of vehicles that can be stored:

Bidders must provide a complete description of the secure facility specifically identifying all security features.

**Attachment E – Auction Frequency Response Form**

This form is for the Auction Frequency requirement in Section IV. B of the RFP.

The Bidder must provide the schedule of auctions held for the period September 1, 2011 through August 31, 2012.

### **Attachment F – Web Presence Response Form**

This form is for the Web Presence requirement in Section IV. C of the RFP.

It is desirable that the Bidder has a Web Presence that allows for bids to be received via the web or phone during a public auction.

1. Does the Bidder have a web presence? If yes, please supply web address.

Yes \_\_\_\_\_  No

2. Can bids be submitted via the web during an auction?

Yes  No

3. Can bids be submitted via phone during an auction?

Yes  No

If yes to questions 2 and/or 3 above, please provide a description of the process for accepting bids via the web and/or phone during an auction.

### **Attachment G – Property Inventory System**

The Bidder must document its capability to develop, operate and maintain a property inventory system which will track all assets for storage/auction from designation by the State, availability for auction, transfer to offeror, processing for auction offering, secure storage during the auction process and until receipt of asset by the winning bidder and collection of funds for purchase and confirmation of receipt of goods.

Please indicate if property inventory system is currently in place or will be developed.

Currently in place     To be developed

Provide a description of the current system or the system to be developed.

**Attachment H – Other Services Response Form**

The Department may require additional services in response to this RFP, such as vehicle condition report, vehicle preparation for auction, inflation of tires, charging/replacement of batteries, duplicate keys, advertising, etc.

By signature below, the Bidder affirms they will provide services such as a vehicle condition report, appraised auction value, advertising and replacement keys necessary to auction the asset.

It is desirable that the Bidder also provide services such as vehicle preparation, filling of tires, charging/replacing batteries. Please indicate below if these services are available.

Vehicle Preparation  Yes  No

Filling tires  Yes  No

Charging/Replacement of Batteries  Yes  No

Please describe all other services available:

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

Name:

Date: / /

### Attachment I – Reference Response Form

The Bidder must provide three (3) references for contracts that are similar in scope to the services requested in this RFP.

#### Contract 1:

Client Name:

Client address:

Contract Start Date: / /                      Contract End Date: / /

Type of Entity:  Government Entity     Other

Type of Services Provided:  Storage     Auction

Average annual volume stored:                      Average annual volume auctioned:

#### Contract 2

Client Name:

Client address:

Contract Start Date: / /                      Contract End Date: / /

Type of Entity:  Government Entity     Other

Type of Services Provided:  Storage     Auction

Average annual volume stored:                      Average annual volume auctioned:

#### Contract 3

Client Name:

Client address:

Contract Start Date: / /                      Contract End Date: / /

Type of Entity:  Government Entity     Other

Type of Services Provided:  Storage     Auction

Average annual volume stored:                      Average annual volume auctioned:

**Alternate 1**

Client Name:

Client address:

Contract Start Date:    /    /                      Contract End Date:    /    /

Type of Entity:     Government Entity     Other

Type of Services Provided:     Storage     Auction

Average annual volume stored:                      Average annual volume auctioned:

**Alternate 2**

Client Name:

Client address:

Contract Start Date:    /    /                      Contract End Date:    /    /

Type of Entity:     Government Entity     Other

Type of Services Provided:     Storage     Auction

Average annual volume stored:                      Average annual volume auctioned:

### **Attachment J – Insurance Response Form**

Prior to the commencement of services to be provided by the Contractor hereunder, the Contractor shall file with The People of New York State, Department of Taxation and Finance, Certificates of Insurance evidencing compliance with all requirements contained in the contract. Such certificates shall be of form and substance acceptable to the Department.

#### Bidder Affirmation

The Bidder agrees it will obtain insurance coverage as defined in Section IV. G:

Yes  No