

**INVITATION FOR BIDS**

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| **BID DUE DATE**:  July 30, 2019 by 2:00 PM ET | **TITLE**:  Computer to Plate Image System | | **INVITATION FOR BID NUMBER:**  19-200 |
| **CONTRACT PERIOD:** The term of the contract will be for a period of five (5) years. The contract shall commence upon approval of the Office of the Attorney General and the Office of the State Comptroller. | | | |
| **DESIGNATED CONTACTS:** | | | |
| Shannon Plasencia, Contract Management Specialist 2  Telephone No. (518) 530-4484  E-mail address**:** [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov) | | Peter Russell, Contract Management Specialist 3  Amber Alexander, Director of Procurement Services  Telephone No. (518) 530-4484  E-mail address**:** [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov) | |
| **The bid must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts) and Appendix B (General Specifications) and that all information provided is complete, true and accurate. By signing, Bidder also affirms that it understands and agrees to comply with the Department of Taxation and Finance (“DTF”)** **procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be found at:**  <http://www.tax.ny.gov/about/procure> | | | |

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| **Bidder’s Federal Tax Identification Number:**  *(Do Not Use Social Security Number)* | | **NYS Vendor Identification Number:***(See “New York State Vendor File Registration” clause)* | |
| If applicable, place an “**x**” in the appropriate box (***check all that apply***): | NYS Small Business \*  \_\_\_\_\_ # of Employees | NYS Certified Minority Owned Business | NYS Certified Women Owned Business |
| Legal Business Name of Company Bidding: | | | |
| D/B/A - Doing Business As (if applicable): | | | |
| Street City State Zip County | | | |
| If you are not bidding, place an “x” in the box and return this page only.  WE ARE UNABLE TO BID NOW BECAUSE: | | | |
| Bidder’s Signature:  Title: | | Printed or Typed Name:  Date: | |

**\* Note: A “New York State Small Business” is defined as a company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. There is no certification process to be considered a New York State Small Business**.

1. GENERAL INFORMATION:

**IMPORTANT NOTICE TO POTENTIAL BIDDERS: Receipt of these bid documents does not indicate that the Department of Taxation and Finance has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.**

* 1. NOTICE TO BIDDERS:

The Department of Taxation and Finance (“DTF” or “Department”) is replacing an existing Computer to Plate machine, a Heidelberg Suprasetter E105. Through this Invitation for Bids (“IFB”), the Department is seeking proposals for one (1) new Computer to Plate Image System and software associated with the operation of such equipment. Pursuant to the provisions of Article XI of the State Finance Law, sealed bids will be received by DTF at the address in Section 1.1.4 for furnishing the items listed in this IFB. When submitting a bid, you must:

* + 1. Prepare and submit your bid in accordance with this IFB and **Attachment 1, Bidder’s Checklist**. This IFB and Attachment 1 outlines the terms and conditions, and all applicable information required for submission of a bid.
    2. Include four (4) original signed and notarized copies of the signature page (**Attachment 2**). **BY SIGNING, BIDDER IS SUBMITTING AN OFFER, WHICH IF ACCEPTED BY DTF, BECOMES A BINDING CONTRACT, NUMBER C400724 (“CONTRACT” OR “AGREEMENT”). SUCH CONTRACT SHALL INCLUDE THE TERMS AND CONDITIONS CONTAINED HEREIN.**
    3. Submit detailed specifications, circulars and all necessary data on the product to be furnished. Failure to submit any of the above data may result in rejection of the bid.
    4. Mail the bid promptly to the address located below for it to be received by the due date. Late bids may be rejected. E-mail and fax bid submissions are not acceptable and will be considered non-responsive.

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

**Office of Budget and Management Analysis**

**Procurement Unit**

**Attn: Amber Alexander, Procurement Director**

**Building 9 Room 234**

**W A Harriman Campus**

**Albany, NY 12227**

Please note, if you are using a delivery service, the bid response should be addressed to the Department’s Procurement Unit, but the delivery address service should be:

90 Cohoes Avenue

Green Island, New York 12183

1.1.5 State "**BID ENCLOSED**" and record the **IFB Number** and **Bid** **Opening** **Date** on the envelope containing the sealed bid. Failure to complete all information on the bid envelope may necessitate the premature opening of the bid which may compromise its confidentiality. An improperly submitted bid resulting in a **LATE** **BID** may not be considered.

All amendments, clarifications, and any announcements related to this IFB will be posted on the Department’s 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 bid. Failure to include this information may result in the Bidder’s bid being deemed non-responsive.

* 1. SCHEDULE OF EVENTS:

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| June 27, 2019 | Issuance of IFB |
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| July 8, 2019 | Deadline to Register for Pre-Bid Site Visit |
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| July 10,2019 | Pre-Bid Site Visit |
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| July 17, 2019 | Deadline for Filing Offer Understanding of, and Compliance with, Procurement Lobbying Guidelines |
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| July 17, 2019 | Deadline for Submission of Written Questions |
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| July 23, 2019 | Department Response to Bidder Questions Posted |
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| July 30, 2019 by 2:00 PM ET | Deadline for Submission of Bids |
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| July 31, 2019 | Anticipated Bid Opening |
|  |  |
| August 6, 2019 | Anticipated Notification of Intent to Award |

* 1. SCOPE:

The New York State Department of Taxation and Finance is seeking competitive bids for one (1) Computer to Plate Image System, and software associated with the operation of such equipment. The Department also seeks software and hardware maintenance on the System, on-site installation, and related training.

The Computer to Plate Image System must contain:

1. Manual plate feed image setter;

2. External-drum Computer-to-Plate recorder;

3. Throughput: at max. format depending on plate type; and

4. Plate format requirements: Must accommodate a minimum of at least 13” x 18” and a maximum of 24 5/8” x 36”.

* 1. MANDATORY PRE-BID SITE VISIT:

Any Bidder interested in submitting a proposal must attend a Pre-Bid Site Visit in order to familiarize itself with the facilities at the Department where the product is to be installed. The Bidder will assume full responsibility for the product meeting the solicitation and installation requirements. Particular attention shall be given to structural and electrical changes required for proper installation. The Bidder must provide, with its bid, a detailed explanation if additional work is required in order to properly complete the delivery and installation.

The Pre-Bid Site Visit will be conducted on the date and time specified in the Schedule of Events, at the Department's Green Island facility, 90 Cohoes Ave, Green Island, NY. Bidders must register to attend by e-mail to: [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov) no later than the date specified in the Schedule of Events. Confirmation will be acknowledged and directions to the Green Island facility will be provided. **Prospective Bidders are required to attend the Pre-Bid Site Visit.**

Prospective Bidders will have the opportunity to ask questions at the Pre-Bid Site Visit. To the extent possible, Department representatives will give oral responses to questions raised at the site visit; however, all oral responses are unofficial. Only the Department's written responses should be relied upon when preparing a proposal.

* 1. BIDDER’S MINIMUM QUALIFICATIONS:

Bids will not be considered unless the firm submitting the bid can meet the following qualifications. The Bidder must:

* + 1. Be the original manufacturer or an authorized dealer for the Computer to Plate Image System;
    2. Maintain a business establishment with adequate access to inventories of parts and accessories which are readily available;
    3. Have trained personnel qualified to satisfactorily make needed major and minor repairs at the Department’s Green Island facility within one (1) business day unless otherwise approved by the Department.
    4. Warrant the availability of both parts and service personnel during the contract term.
    5. Ensure the proposed equipment fits into the space identified in **Exhibit A, Plate Room Blueprint**.

**IFB 19-200 MAKES NO ALLOWANCE FOR THE USE OF SUBCONTRACTORS.**

* 1. MANDATORY PRODUCT SPECIFICATIONS:

The Bidder must provide detailed specifications, circulars and all necessary information to support the required specifications for the Computer to Plate Image System.

* + 1. Computer to Plate Image System Specifications:
       1. The Bidder must provide a Computer to Plate Image System that uses current industry technology that meets or exceeds the minimum specifications provided in this document. The Department reserves the right in its sole discretion to make the final determination of whether or not the proposed equipment meets or exceeds the minimum specifications.

The following specifications outline the features and capabilities minimally required by the Department:

* The system must be a top quality thermal imaging plate setter capable of processing a minimum of 16 full size plates per hour throughput speed @ 2540 dpi with an intuitive user interface.
* All workflow software must be included, fully automated, and integrate seamlessly with our current equipment. (Heidelberg Prinect Signa station 106 version 13.00.4195.14.)
* The Contractor must provide all connectivity between the Department’s current Heidelberg Prinect Signa station 106, version 13.00.4195.14 device to the Raster Image Processor (RIP) device.
* The Contractor must provide a backup/archival/retrieval copy of all software required to restore operations.
* The Contractor must provide an 8-page plate setter with external drum.
* Plate format requirements: Must accommodate a minimum of at least 13” x 18” and a maximum of 24 5/8” x 36”.
* Plate thickness: Must be within the range of 0.15 – 0.25 mm (0.0006 – 0.010 in).
* Must incorporate temperature compensation for exact plate remakes.
* Must operate in an environment where temperatures typically range from 62.6 to 86 degrees Fahrenheit.
* Must be able to produce non-baked thermal plates with a minimum run life of 250,000 impressions using ultraviolet ink.
* The Contractor must submit a Material Safety Data Sheet (MSDS) for all chemicals used by the proposed system.
* The Computer to Plate Image System must be compatible with an Epson 9800 proofing system.
  1. SUPPORT AND MAINTENANCE:
     1. General Requirements:

The Contractor must be certified/authorized for all aspects of maintenance and support. The Contractor must provide technical support to include, but not be limited to:

• Problem investigation services for all hardware and software installed and purchased as part of this system.

• Customer help line assistance via a local or toll-free number for immediate and direct vendor contact and access to technical staff.

• Technical support by a trained and experienced system engineer for all issues related to products associated with system implementation.

• Replacement of all parts with manufacturer certified replacement parts to maintain the equipment within the manufacturer's specifications. The contractor must be certified/authorized for all aspects of repair.

• Maintenance and support available from 8:00 am to 5:00 pm ET- Monday to Friday, except on State holidays.

• Support calls must be responded to within sixty (60) minutes of the Department's call for assistance.

* On-site service must be provided within one (1) business day from receipt of the Department's request for support unless otherwise approved by the Department.

1.7.2. Software Maintenance Requirements:

Software maintenance must include, but should not be limited to, all software updates, security updates and/or patches as they are released. The Department will install an SCCM Client Software on the system and will be responsible for all operating system, internet security and Virus Scan updates and patches.

The Contractor will be required to install all patches, updates, etc. The Contractor will not be provided internet access to perform these functions; updates and patches must either be made available for downloading by Department staff or the Contractor must manually install any upgrades/patches, etc. at the Green Island facility.

The Contractor will be responsible for installing any application updates. The Contractor must ensure that application functions correctly with the current DTF operating system, SCCM client software, and Virus Scan software.

For troubleshooting purposes, a WebEx connection can be arranged, as needed, by Department personnel.

1.7.3. Hardware Maintenance Requirements:

At no cost to the Department, the initial one (1) year period hardware support and maintenance must include, but not be limited to:

* Preventative Maintenance as required by the proposed product specifications
* Service
* Labor
* Parts

After the initial one (1) year period, the Department requires preventative maintenance for contract years two (2) through five (5). The Bidder must list out on **Attachment 17, Bidder’s Financial Response Form**:

* the yearly preventative maintenance cost;
* the hourly job rate; and
* the discount percentage off the parts list price for any time and materials costs for contract years two (2) through five (5).

1.7.4. Training:

* The Contractor will provide on-site instruction by qualified personnel to ensure Department personnel can operate and maintain each system to the full extent of its design capabilities. Such training must commence within one (1) business day of the completed installation.
* The Contractor must provide training programs and initial on-site training, as required, for all modules and components of each system.
  1. BID CONDITIONS:
     1. Acceptance Period:

The Department requires a thirty (30) day acceptance period to ensure equipment and software performs to the satisfaction of the Department; invoices should not be generated by the Contractor until the Department has accepted the equipment.

1.8.2. Pre-Award Equipment Demonstration:

The Department reserves the right to view the proposed equipment in operation prior to making an award to ensure conformance with IFB specifications.

1.8.3. Warranties:

The Contractor guarantees: (1) that the equipment offered is the latest model of standard new equipment; (2) that no attachment or parts have been substituted or applied contrary to manufacturer's recommendations and standard practices and (3) that the Department is guaranteed against faulty material and workmanship for a period of one (1) year unless otherwise noted. If during this period such faults develop, the unit or part effected is to be replaced without cost to the Department. The guarantee shall also include any labor costs. Where accessories are to be supplied, they must be compatible with the rest of the product.

1.8.4. Instruction Manuals:

Simultaneous with delivery, the Contractor shall furnish to the Department two (2) sets of complete instruction manuals for the product and for each component supplied. The manuals shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

* 1. NON-COLLUSIVE BIDDING CERTIFICATION:

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

By submission of this bid, each 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 its 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 submit a bid for the purpose of restricting competition.

* 1. APPENDIX A:

**Appendix A, Standard Clauses for NYS Contracts**, dated January 2014 attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference.**

* 1. APPENDIX B:

**Appendix B, General Specifications** dated September 2016, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

* 1. APPENDIX C:

The Department’s procedures for handling protests of bid awards are set forth in **Appendix C, Bid Protest Policy**. **Please retain this document for future reference.**

* 1. CONFLICT OF TERMS AND CONDITIONS:

Conflicts between documents shall be resolved in the following order of precedence:

1. Appendix A
2. Attachment 11, DTF-202, Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code
3. Attachment 12, Acknowledgement of Confidentiality of IRS Tax Return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors
4. This Invitation for Bid including all Exhibits and Attachments, excluding Attachments 11 and 12
5. Appendix B
6. Appendix C
7. Contractor’s Bid
   1. TAX LIABILITIES:

All outstanding Tax Liabilities, due to the State of New York from the awarded 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 satisfaction.

* 1. INQUIRIES/ISSUING OFFICE:

Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the IFB are to be resolved prior to the submission of a bid. Bidders entering into a Contract with the State are expected to comply with **all** the terms and conditions contained herein.

Prospective Bidders have the opportunity to submit written questions and requests for clarifications regarding this IFB. All questions regarding this IFB must be submitted by e-mail and received **by the date specified on the Schedule of Events**. Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Questions should cite the specific bid section and page number and the Bidder should indicate the name, address, telephone number and e-mail address of the individual submitting questions.

All inquiries concerning this bid solicitation must be addressed to the following Designated Contacts and issuing office:

**DESIGNATED CONTACTS:**  Shannon Plasencia, Contract Management Specialist 2

Peter Russell, Contract Management Specialist 3

Amber Alexander, Director, Procurement Services

Phone: (518) 530-4484

Email: [bfs.contracts@tax.ny.gov](mailto:bfs.contracts@tax.ny.gov)

Contacting someone else may result in rejection of bid – see more of this in **PROCUREMENT LOBBYING LAW** (Section 1.16)

The Department will respond, in writing, to all substantive questions by the date specified in the Schedule of Events. All amendments, clarifications, Bidder questions with the Department’s responses and any announcements related to this bid will be posted on the Department’s Procurement Opportunity website at:

<https://www.tax.ny.gov/about/procure/current_bid_opportunities.htm>

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.

**IT IS INCUMBENT ON THE PROSPECTIVE BIDDER TO NOTIFY THE DESIGNATED CONTACT(S) OF ANY TERM, CONDITION, ETC. THAT PRECLUDES THE VENDOR FROM SUBMITTING A BID.**

* 1. PROCUREMENT LOBBYING LAW:
     1. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING:

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the 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 the DTF and, if applicable, the Office of the State Comptroller (“restricted period”) to other than the Designated Contact(s) unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated Contact(s), as of the date hereof, is identified above. 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 DTF’s Procurement website at: <https://www.tax.ny.gov/about/procure/> .

* + 1. AFFIRMATION OF UNDERSTANDING OF, AND COMPLIANCE WITH PROCUREMENT LOBBYING GUIDELINES:

New York State Finance Law 139-j(6)(b) requires that 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. Information related to the Procurement Lobbying Law and DTF guidelines can be found on the Department’s Procurement website at: <https://www.tax.ny.gov/about/procure/> **Attachment 3, Offerer Understanding of, and Compliance with, Procurement Lobbying Guideline** is to be completed and submitted with this bid.

* + 1. PROCUREMENT LOBBYING ACT OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITITY 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. **Attachment 4, Offerer Disclosure of prior Non-Responsibility Determination** is to be completed and submitted with this bid.

* + 1. 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. **Attachment 5, Offerer Certification of Compliance with State Finance Law 139-k(5)** is to be completed and submitted with this bid.

* + 1. PROCUREMENT LOBBYING TERMINATION:

DTF reserves the right to terminate this Contract 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. Upon such finding, DTF may exercise its termination right by providing written notification to the Offerer/Bidder in accordance with the written notification terms of this Contract.

* 1. METHOD OF AWARD:

The Contract Award will be made to the Bidder who successfully meets all the Mandatory Requirements and provides the lowest overall cost.

In the event tie bids are received by the Department where cost is the sole determining factor for award, the following determination shall be used to determine the winner:

* Earliest bid received
  1. PRICE:

Price shall include all customs duties and charges including unloading on the dock and be net, F.O.B. New York State Department of Taxation and Finance, 90 Cohoes Ave., Green Island, NY 12183.

Prices are to be provided by the Bidder on **Attachment 17, Bidder’s Financial Response Form**. A Bidder’s failure to provide a complete pricing response will result in the Bidder’s proposal being deemed non-responsive. Bidders must provide all pricing information requested on Attachment 17 and should not modify or change the Attachment. Any pricing information or add-on costs that do not conform to the presentation allowed on Attachment 17 cannot be evaluated, will be disregarded as extraneous, and cannot be charged to the Department after award of a Contract.

Prices quoted shall be good for 120 days from date of bid submission indicated on the IFB cover page.

1.18.1 Equipment Costs:

The Bidder must identify the hardware and software proposed and provide the cost for the Computer to Plate Imaging System where indicated on Attachment 17.

1.18.2. Installation Specifications/Costs:

The Department is responsible for bringing all services within six (6) feet of the installation site. The Contractor will be responsible for all components required to completely install the system.

The Bidder must identify all specifications for installation (i.e., electrical supply, air connections, plumbing, etc.) and identify any costs associated with the specifications to be incurred by the Bidder, including, but not limited to, unloading, moving to point of use, uncrating, etc.

1.18.3. Software Maintenance:

The Bidder must provide cost of software maintenance and support for years 1 through 5 on **Attachment 17, Bidder’s Financial Response Form.** Any travel costs associated with this plan must be included in the annual cost.

1.18.4. Hardware Maintenance:

As outlined in Section 1.7, the Department will require hardware maintenance and support which will include preventative maintenance, service, labor and parts.

The Bidder must provide the following information on **Attachment 17, Bidder's Financial Response Form**, for five (5) years.

1.18.4.1 Hardware Maintenance and Support to include preventative maintenance, service, labor and parts. Travel costs associated with this plan must be included in the annual cost.

1.18.4.2. Time and Materials Costs for years two (2) through five (5) of the contract as follows:

* Hourly service labor rate
* Discount Percentage from Bidder’s list price for parts.

The Bidder must note that travel will be reimbursed by the Department as a passthrough cost and in accordance with the NYS Office of the State Comptroller policies and procedures in effect at the time of travel. See <http://osc.state.ny.us/agencies/travel/travel.htm> for specific detail. Copies of actual receipts must accompany invoices.

1.18.5 Training:

On **Attachment 17, Bidder’s Financial Response Form**, the Bidder must provide costs for initial on-site training/instruction as described in section 1.7.4. Training costs *must* be inclusive of travel and ancillary expenses.

1.18.6. Equipment Trade-In:

On **Attachment 17, Bidder’s Financial Response Form**, the Bidder must provide the amount, if any, it would allow for trade-in of the following equipment:

* Heidelberg Suprasetter E105

The Contractor will be required to dismantle the equipment and remove it from the Green Island facility, at no charge to the Department. Removal must be completed before installation of the new equipment, but no earlier than two (2) business days before installation of new equipment.

The Bidder must complete **Attachment 17, Bidder’s Financial Response Form**, to affirm understanding of, and agreement to comply with, the mandatory financial provisions of this IFB. Bidders must only use this form to present their pricing, and Bidders must not modify or change the form. All costs associated with the mandatory requirements of this IFB must be incorporated into the Bidder’s financial response.

* 1. DELIVERY:

Proposed equipment must be delivered and installed no later than November 15, 2019 to ensure there is no interruption during the Department’s peak printing period. If the Contractor is not able to have all proposed equipment installed prior to November 15, 2019, the equipment must be held by the Contractor, at no cost to the Department, until conclusion of the Department’s peak printing period. This peak time historically ends at the end of April.

On **Attachment 17, Bidder's Financial Response Form**, the Bidder is required to certify the equipment can be delivered and installed as required.

Contractor shall furnish DTF with written acknowledgement of the shipping date at least two (2) weeks prior to shipment. Failure to comply may be cause for the initiation of contract default proceedings.

* 1. PAYMENTS:
     1. Electronic Payment:

Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, at 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 [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov) , or by telephone at (855)-233-8363. The 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.

* + 1. Properly Submitted Invoices:

Payment will be made only upon submission of proper invoices by the Contractor, and in accordance with Article 11A of New York State Finance Law.

Required Information on properly submitted invoices:

* Contractor's SFS Vendor Number;
* Invoice or account number;
* Name of NYS Agency to which goods or services related to the invoice were provided;
* A valid NYS Purchase Order (PO) Number and/or Contract number associated with the invoice; and
* Line item details that match the corresponding PO line item.
  + 1. Invoice Submission:
* Preferred Method: Email invoices to the OGS-BSC at:

[accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov) including the invoice number and the name of the agency being billed in the subject field. (Note: Do not send a paper copy in addition to the electronic invoice.)

* Alternate method: Mail invoices to OGS-BSC at the following U.S. postal address:

New York State Department of Taxation and Finance

c/o NYS OGS Business Services Center

1220 Washington Avenue

Building 5, 5th Floor

Albany, NY 12226-1900

* 1. TERMINATION:
     1. Termination for Convenience:

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

* + 1. Termination for Cause:

DTF reserves the right to terminate the Contract for cause at any time upon written notice to the awarded Contractor. If the Contractor materially fails to perform its obligations under the Contract and does not, within thirty (30) calendar days after receiving written notice from DTF describing the alleged material failure in reasonable detail, cure the material failure, then DTF may terminate the Contract, in whole or in part, and pursue its available remedies.

Any request by a Bidder regarding changes in any part of the Contract must be made in writing to the Designated Contact(s) noted above, prior to the Deadline for Questions noted in the above Schedule of Events.

1. ADMINISTRATIVE REQUIREMENTS:
   1. PUBLIC ANNOUNCEMENTS:

Public announcements or news releases relating to this IFB 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 requests for approval shall not be considered until an executed Contract is in place.

* 1. 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 awarded 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. The Bidder must complete and submit the Non-Discrimination in Employment in Northern Ireland, **Attachment 6, MacBride Fair Employment Principles.**

* 1. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES:
     1. GENERAL PROVISIONS:
        1. The Department of Taxation and Finance (“Department”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) 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.
        2. 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 Department, to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The 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”) and other applicable federal, state, and local laws.
     2. CONTRACT GOALS:
        1. For purposes of this Contract, the Department hereby establishes an overall goal of 0% for MWBE participation, 0% for New York State-certified minority-owned business enterprise (“MBE”) participation and 0% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

* + 1. EQUAL EMPLOYMENT OPPORTUNITY (“EEO”):
       1. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
       2. In performing the Contract, the Contractor shall:
          1. Ensure that each Contractor and subcontractor performing work on the Contract 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 Department within seventy-two (72) hours after the date of the notice by the Department to award the Contract to the Contractor.
          3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the Department may require the Contractor or subcontractor to adopt a model statement (see **Attachment 7, Equal Employment Opportunity Policy Statement**).
          4. The Contractor’s EEO policy statement shall include the following language:
* 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 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.
* 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.
* 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.
* The Contractor will include the provisions of all Subdivisions of this Subsection 2.3.3.2.4 and Subsection 2.3.3.5, 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.
  + - 1. ATTACHMENT 8, 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. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by the Department.

* + - 1. EXHIBIT B, WORKFORCE UTILIZATION REPORT:
         1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Department on a QUARTERLY basis during the term of the Contract.
         2. Separate forms shall be completed by the Contractor and any subcontractors.
         3. Pursuant to Executive Order #162, Contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the Contract on a quarterly basis.
      2. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its 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.
  1. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES:

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Department of Taxation and Finance recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Department of Taxation and Finance contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, the Department of Taxation and Finance conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/> .

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

* 1. 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, the awarded Contractor shall cooperate fully with the Department, to the extent permitted by law, to investigate and identify the responsible individuals. Contractor 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 exclusively interview Contractor’s employees and/or agents in connection with an investigation during normal business hours.

* 1. WORKERS’ COMPENSATION AND DISABILITY BENEFITS CERTIFICATIONS:

Sections 57 and 220 of the New York State Workers’ Compensation Law (WCL) provide that the State shall not enter into any contract unless proof of workers’ compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the State, Successful Proposers will be required to verify for the State, on forms authorized by the New York State Workers’ Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. Any questions relating to either workers’ compensation or disability benefits coverage should be directed to the State of New York Workers’ Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to provide verification of either of these types of insurance coverage by the time contracts are ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

**Proof of Workers’ Compensation Coverage:**

Upon notification of award, the successful Bidder will be requested to submit ONE of the following forms as Workers’ Compensation documentation:

* Form C-105.2 – Certificate of Workers’ Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or
* Form SI-12 – Certificate of Workers’ Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers’ Compensation Group Self-Insurance); or
* Form CE-200 – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

**Proof of Disability Benefits Coverage:**

Upon notification of award, the successful Bidder will be requested to submit ONE of the following forms as Workers’ Compensation documentation:

* Form DB-120.1 – Certificate of Disability Benefits Insurance; or
* Form DB-155 – Certificate of Disability Benefits Self-Insurance; or
* Form CE-200—Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

Further information is available at the Workers’ Compensation Board’s website, which can be accessed at: <http://www.wcb.ny.gov> .

Please note that although these forms are not required as part of the bid submissions, the State encourages Bidders to include them with their bid submissions to expedite Contract execution if the Bidder is awarded the Contract. Note also that only the forms listed above are acceptable; ACORD forms cannot be accepted.

* 1. NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE:

Article XI §163(a)(ii) of the State Finance Law states that “Commodities contracts shall be awarded on the basis of lowest price to a responsive and responsible offerer.”

Upon identification of the Bidder with the lowest price, 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.

For bids equal to or exceeding $100,000, 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.

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. Bidders must complete and submit **Attachment 9, Vendor Responsibility Response Form**.

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

* 1. NEW YORK STATE VENDOR FILE REGISTRATION:

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, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned to each of your authorized subcontractors (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 certain vendor information in one central location for all transactions related to the State of New York.

If the Bidder is already registered in the Vendor File, the Bidder must enter its ten-digit Vendor ID number on the first page of this IFB.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID number from DTF. Complete the OSC Substitute W-9 Form (available at <http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf>), and submit the form to DTF preferably in advance of bidding. Please send this document to the Designated Contact in the solicitation. DTF will initiate the vendor registration process for all Bidders. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following web site:

<http://www.osc.state.ny.us/vendor_management/>

* 1. 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 Law (FOIL). The Department will review applications and grant trade secret protection, if appropriate.

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.

* 1. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE:

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this Contract for commodities are strongly encouraged and expected to consider New York State businesses in the fulfillment of the Requirements of the Contract. Such partnering may be as suppliers, protégés or other supporting roles.

Each Bidder must complete and submit **Attachment 10, Encouraging Use of New York State Businesses in Contract Performance**.

* 1. NEW YORK STATE TAX SECRECY REQUIREMENTS:
     1. Tax Secrecy Provisions:

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

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

The awarded Contractor, all staff members and subcontractors shall agree to view, access and use only that confidential information relevant and necessary to provide services to the State under the Agreement; and to subscribe to the provisions of § 73 and 74 the Public Officers Law.

* + 1. Tax Secrecy – Required Forms:

The Contractor will require each employee and/or Subcontractor assigned to this Agreement to sign **Attachment 11,** **DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code**, and **Attachment 12, Acknowledgment of Confidentiality of IRS Tax Return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors**. The form Acknowledgment of Confidentiality of IRS Tax Return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors must be signed annually. Both forms will be retained by the Contractor and provided to the Department upon request. The Contractor shall complete the Department’s Annual Security Awareness Training on the Department’s website at <https://www.tax.ny.gov/about/procure>.

* + 1. Breach of Confidentiality:

The awarded 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).

* 1. ETHICS PROVISIONS:
     1. Public Officers Law/Former State Employees:

The awarded Contractor shall comply will all applicable requirements of Public Officers Law Sections 73 and 74, the Procurement Lobbying Reform Act of 2005, and other New York State statutes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

The Contractor, and any Subcontractors, may hire former DTF employees. However, former employees of DTF may neither appear nor practice before DTF, nor receive compensation for services rendered on a matter before DTF, for a period of two years following their separation from DTF-service. In addition, former DTF employees are subject to a “lifetime bar” from appearing before DTF or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with DTF.

* + 1. Ethics Requirements:

The awarded Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). The Contractor certifies that all its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

* 1. INFORMATION SECURITY BREACH AND NOTIFICATION ACT:

The awarded Contractor agrees to be responsible for the Department’s obligation to comply with the provisions of Section 208 of the State Technology Law, commonly known as the Information Security Breach and Notification Act (the “ISBNA” or “Act”), and any future amendments thereto, to the extent an information security breach occurs as a result of the acts or omissions of the Contractor, including being responsible to pay all costs associated with and/or incurred because of the breach. Contractor shall comply with all obligations imposed by the Act on the Department with respect to any breach of “private information” (as defined in the Act) used, received, handled, processed, uploaded, stored, or maintained by Contractor on behalf of the Department under this Agreement (“Department 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 Bidder/Contractor’s discovery or receipt of notification of such breach. Such notice to the Department shall be made by contacting the Information Security Office by email to: ISO.Mail@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 NYS-PO3-002, non-New York State residents whose private information is reasonably believed to have been exposed as a result of the breach. All costs associated with providing breach notifications shall be borne by the Contractor. It is expressly agreed that Contractor shall be obligated to receive authorization from the Department prior to making additional notifications hereunder to any individuals, the State Office of Information Technology Services, 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 own obligations under section 899-aa of the General Business Law if such breach also involves other private information unrelated to this Agreement.

* 1. DISPUTE RESOLUTION:

In the event of a dispute arising from this Agreement, the Department shall continue to be able to use the product(s) under the terms and conditions herein while the dispute is resolved. The awarded Contractor and the Department agree that it is important to resolve any disputes regarding the performance of services, or otherwise arising under the Agreement, expeditiously.

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. The parties shall review each other’s position and attempt to reach a resolution. Unresolved disputes will be resolved by the Commissioner, or his/her designee, whose decision is final and binding. During this period all work required hereunder shall continue to be performed. If the Contractor pursues any legal remedy outside this process, the Bidder/Contractor will continue to perform work in accordance with the Agreement and the direction of the Department until such proceedings may be concluded and Contractor will continue to be paid, less an amount determined by the State to be attributable to the disputed work. Disputes that go to litigation must be pursued in a court of competent jurisdiction within the State of New York. New York law (without regard to conflicts of law provisions) will govern the dispute. Nothing in this paragraph shall diminish the State’s right to terminate the Agreement.

* 1. NO CONFLICT OF INTEREST (CONTRACTOR & SUBCONTRACTOR):

The Bidder has provided a form (**Attachment 13**, **Vendor Assurance of No Conflict of Interest or Detrimental Effect**), signed by an authorized executive or legal representative attesting that the Contractor’s performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

The awarded Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Contractor shall have a duty to notify DTF immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this Agreement, the awarded Contractor shall obtain and deliver to DTF, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the Subcontractor. The Contractor shall also require in any subcontracting agreement that the Subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to DTF a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its Subcontractors prior to entering into a subcontract.

DTF and the awarded Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. DTF will review the nature of any relationship and reserves the right to terminate this Agreement for any reason, or for cause, if, in the judgment of DTF, a real or potential conflict of interest cannot be cured.

* 1. EXECUTIVE ORDER NO. 177 CERTIFICATION:

In accordance with Executive Order No. 177, the Bidder must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

The Bidder is responsible for reading, signing and submitting **Attachment 14, EO-177 Certification**.

* 1. CONTRACTOR AND SUBCONTRACTOR:
     1. Contractor:

The awarded Contractor is acting as the prime Contractor under this Agreement and agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written of approval of DTF. Approval shall not be unreasonably withheld upon written request to subcontract. Any such approval does not relieve Contractor of its ultimate responsibility for all services performed under the Agreement. The Contractor shall be:

1. Responsible for, and liable to, the Department for performing in accordance with this Agreement. Contractor shall not in any way be relieved of any financial, programmatic or service responsibility under the Agreement by its agreement with any Subcontractor or by the Department’s approval of such an agreement with a Subcontractor.
2. Responsible for supervising the work of its Subcontractors performing any Services under the Agreement consistent with industry standards applicable to such work.
3. As fully responsible for the acts and omissions of its Subcontractors and employees as it is for acts and omissions of its own employees and agents.
4. Responsible for payment of all Subcontractors and suppliers engaged by or through the Contractor in performance of this Agreement.
   * 1. Subcontracting is not allowed under this Contract.
   1. TAX LAW § 5-A:

For bids equal to or exceeding $100,000, pursuant to Tax Law Section 5-a, the awarded Contractor will be required to complete and sign, under penalty of perjury**, Attachment 15, Contractor Sales Tax Certification Forms** ST-220-CA and ST-220-TD. The awarded Contractor 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 conferment of such status with the Department.

**Attachment 15, Contractor Sales Tax Certification Forms** provides the Contractor Certification Forms and Instructions for completing the forms. Form 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 the Department. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new form ST-220-TD must be filed with the Department. Completion of the form at the time of bid submission is not required; however, Form ST-220-TD must be filed and returned to the Department upon notification of Contract award.

Form ST-220-CA must be provided to the Department’s 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 the Department 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 Department. For additional information and frequently asked questions, please refer to the Department’s website: <http://www.tax.ny.gov> .

2.19 Sexual Harassment Prevention Certification:

State Finance Law §139-l requires bidders on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training to all its employees and that such policy, at a minimum, meets the requirements of section two hundred one-g of the labor law.

The Bidder must complete and submit **Attachment 16, Sexual Harassment Prevention Certification.**

1. RESERVED RIGHTS:

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

1. Change any of the scheduled dates herein.
2. Prior to the bid opening, amend IFB specifications after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all Bidders.
3. Withdraw the IFB, at its sole discretion.
4. Eliminate a mandatory requirement when all Bidders cannot meet such requirement.
5. 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 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.
6. Require the Bidder to demonstrate, to the satisfaction of the Department, any information presented as a part of their proposal.
7. Determine a tie breaking mechanism for award of the contract, to be set prior bid opening, to serve the best interests of the State.
8. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB.
9. Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent IFB Amendments.
10. 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.
11. 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 IFB.
12. Negotiate with the successful Bidder within the scope of the IFB to serve the best interests of the State.
13. Conduct contract negotiations with the next lowest cost responsible Bidder should the Department be unsuccessful in negotiating an Agreement with the selected Bidder.
14. Utilize any and all ideas submitted in the proposals received.
15. Make an award under the IFB, in whole or in part.
16. Seek clarifications and revisions of proposals.

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# 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, licenser, 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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

Albany, New York 12245

Telephone: 518-292-5100

Fax: 518-292-5884

E-mail: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

633 Third Avenue

New York, NY 10017

212-803-2414

E-mail: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

**22. 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 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.

**26.** **IRAN DIVESTMENT ACT**.  By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a 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” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this 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 this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency 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 the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency 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.

January 2014

**APPENDIX B, GENERAL SPECIFICATIONS**

**BID SUBMISSION**

1. INTERNATIONAL BIDDING: All Bids, including all information and Product required by the Solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (US$). Any Bids submitted which do not meet the above criteria will be rejected.
2. BID OPENING Bids may, as applicable, be opened publicly. DTF reserves the right at any time to postpone or cancel a scheduled Bid opening.
3. LATE BIDS: Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the DTF’s sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the DTF that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the DTF be under any obligation to accept a Late Bid.

1. CONFIDENTIAL/TRADE SECRET MATERIALS:

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1. BIDDER/CONTRACTOR: 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 (FOIL, Article 6 of the New York State Public Officers Law (“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.

Section 74 of the Public Officers Law contains the code of ethics which sets forth that no officer or employee of a State agency should disclose confidential information that he acquires during the course of his official duties. This code controls 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.

1. THE DEPARTMENT: Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the DTF. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the DTF, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.
2. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS: If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:
3. PREVAILING WAGE RATE APPLICABLE TO BIDS A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (e.g., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rates for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.
4. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.
5. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:
   1. **Posting:** The Contractor must publicly post on the work Site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.
   2. **Payroll Records:** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over $25,000 where the Contractor maintains no regular place of business in the State, such records must be kept at the work Site. For building services contracts, such records must be kept at the work Site while work is being performed.
   3. **Submission of Certified Payroll Transcripts for Public Works Contracts Only:** Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.
   4. **Day’s Labor:** No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.
6. ARTICLE 9 BUILDING SERVICES CONTRACTS: In compliance with Article 9, Section 230 of the New York State Labor Law:
   1. **Payroll Records:** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work site while work is being performed.
   2. **Overtime:** Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

1. TAXES:
   1. Unless otherwise specified in the Solicitation, Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

* 1. Purchases made by the State of New York and the DTF are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State sales tax exemption, either the Purchase Order issued by the DTF or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116(a)(1) of the Tax Law. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

1. EXPENSES PRIOR TO CONTRACT EXECUTION: The DTF is not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.
2. PRODUCT REFERENCES:
   1. **“Or Equal”**: In all Solicitations or Bid Specifications, the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner’s decision as to acceptance of the Product as equal shall be final.
   2. **Discrepancies in References:** In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.
3. REMANUFACTURED, RECYCLED, RECYCLABLE, OR RECOVERED MATERIALS: Upon the conditions specified in the Solicitation and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable, or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements, or in the Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements, or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

Items with recycled, recyclable, recovered, refurbished, or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

1. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS: Bids offering Products that are manufactured or produced in public institutions will be rejected.
2. PRICING
   1. **Unit Pricing:** If required by the Solicitation, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places, for each item unless otherwise specified in the Solicitation. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.
   2. **Net Pricing:** Unless otherwise required by the Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination indicated in the Solicitation or Purchase Order.
   3. **“No Charge” Bid:** When Bids are requested on a number of Products as a Group or lot, a Bidder desiring to Bid “no charge” on a Product in the Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.
   4. **Educational Pricing:** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.
   5. **Specific price decreases**:
      1. **GSA Changes**: Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or
      2. **Commercial Price List Reductions**: Where net pricing under the Contract is based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing on its commercial price lists during the Contract term; or
      3. **Special Offers/Promotions Generally**: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and
      4. **Special Offers/Promotions:** Contractor may offer the DTF, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order from the DTF without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

* 1. COST PROPOSAL REVISIONS: A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law Section 163(9)(c). A cost proposal revision must be a lower price than the initial price.

1. SITE INSPECTION: Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder’s ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

**BID EVALUATION**

1. BID EVALUATION: The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his or her sole discretion, may accept or reject illegible, incomplete or vague Bids, and the Commissioner’s decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder’s conditional or revocable terms in the Bid.
2. TIE BIDS: In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.
3. TIMEFRAME FOR OFFERS: The Commissioner reserves the right to make awards within 120 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 120 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.
4. DEBRIEFINGS: Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by DTF that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation. Such sessions will be limited to discussions of evaluation results as they apply to the Bidder receiving the debriefing.
5. CONTRACT PUBLICITY: Public announcements or news releases relating to this IFB 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 requests for approval shall not be considered until an executed contract is in place.

**TERMS & CONDITIONS**

1. MODIFICATION OF CONTRACT TERMS: The terms and conditions set forth in the Contract shall govern all transactions by the DTF under this Contract.

No alteration or modification shall be made by unilaterally affixing terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, “shrink wrap” terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding the DTF’s subsequent acceptance of Product, or that the DTF has subsequently processed such document for approval or payment.

1. PURCHASE ORDERS: Unless otherwise authorized in writing by the DTF, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the DTF. Unless terminated or cancelled pursuant to the authority vested in the DTF, Purchase Orders shall be effective and binding upon the Contractor (i) in the case of formal written Purchase Orders, when placed in the mail prior to the termination of the Contract and addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification or (ii) in the case of electronic Purchase Orders or Purchasing Card purchases, when electronically transmitted to the Contractor prior to the termination of the Contract.

All Purchase Orders issued pursuant to a Contract let by the DTF must be identified with the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the DTF may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract..

1. SHIPPING/RECEIPT OF PRODUCT:
   1. PACKAGING: Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the DTF unless otherwise specified in the Contract documents.
   2. SHIPPING CHARGES: Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the DTF. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the DTF’s payment of transportation charges. Contractor shall be responsible for ensuring that the bill of lading states “charges prepaid” for all shipments.
   3. RECEIPT OF PRODUCT: The Contractor shall be solely responsible for assuring that deliveries are made to the locations and/or personnel specified by the DTF in the Purchase Order. Any losses or delays resulting from the Contractor’s failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.
2. TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS: Notwithstanding the form of shipment, title or other property interest, risk of loss for Products other than technology Products shall not pass from the Contractor to the DTF until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract or Purchase Order. Mere acknowledgment by DTF personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner. Title, risk of loss, and acceptance for technology Products shall be governed by the Product Acceptance clause.
3. REJECTED PRODUCT: When Product is rejected, it must be removed by the Contractor from the premises of the DTF within ten calendar days of notification of rejection by the DTF. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the DTF shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the DTF for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.
4. INSTALLATION: Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the Site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site. Work shall be performed to cause the least inconvenience to the Authorized User and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.
5. REPAIRED OR REPLACED PRODUCTS, PARTS, OR COMPONENTS: Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer’s component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers’ installed parts or components must be approved by the DTF. The part or component shall be equal to or of better quality than the original part or component being replaced.
6. EMPLOYEES, SUBCONTRACTORS AND AGENTS: All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract or the Purchase Order, and must comply with all security and administrative requirements of the DTF that are communicated to the Contractor. The DTF reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with the DTF’s security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract or the Purchase Order. The DTF reserves the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.
7. ASSIGNMENT: In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor’s business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes DTF responsibilities for the Contract.

1. SUBCONTRACTORS AND SUPPLIERS: The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior DTF Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor’s list of companies with which New York State cannot do business; the Commissioner’s determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.
2. SUSPENSION OF WORK: The Commissioner, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the DTF. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

1. TERMINATION:
   1. FOR CAUSE: For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively. Neither the State nor an Authorized User shall be liable for any of Contractor’s costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
   2. FOR CONVIENIENCE: This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, DTF shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.
   3. FOR VIOLATION OF SECTIONS 139-j AND 139-k OF THE STATE FINANCE LAW: The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.
   4. FOR VIOLATION OF SECTION 5-a OF THE NEW YORK STATE TAX LAW: The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.
   5. FOR NON-RESPONSIBILITY: The Bidder agrees that if it is found by the State that the Bidder’s responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate DTF officials or staff, the Contract may be terminated by the Commissioner at the Contractor’s expense where the Contractor is determined by the Commissioner to be non-responsible. In such event, the Commissioner may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

* 1. UPON CONVICTION OF CERTAIN CRIMES: The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

1. SAVINGS/FORCE MAJEURE: A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties’ objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

1. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
2. The Contractor will provide DTF with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees DTF shall accept allocated performance or deliveries during the occurrence of the force majeure event.

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

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

In addition, the Commissioner reserves the right, in his or her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. “Extreme and unforeseen volatility in the marketplace” is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor’s performance that continued performance of the Contract would result in a substantial loss to the Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

1. PROMPT PAYMENTS

Payments shall be made in accordance with Article 11-A of State Finance Law.

1. REMEDIES FOR BREACH: Unless otherwise specified by the DTF, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the DTF, the DTF may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the DTF, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the DTF in the event of breach shall include but not be limited to the following:
   1. COVER/SUBSTITUTE PERFORMANCE: In the event of Contractor’s material, uncured breach, the DTF may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the DTF is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the DTF may acquire acceptable replacement Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State.
   2. WITHHOLD PAYMENT: In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the DTF.
   3. BANKRUPTCY: In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, DTF may, at their discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.
   4. REIMBURESEMENT OF COSTS INCURRED: The Contractor agrees to reimburse the DTF promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney’s fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the DTF may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

* 1. DEDUCTION/CREDIT: Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

1. ASSIGNMENT OF CLAIM: Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.
2. TOXIC SUBSTANCES: Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide DTF with not less than two copies of a Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Safety Data Sheet must be provided to and approved by the DTF.

1. INDEPENDENT CONTRACTOR: It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the DTF, and therefore are not entitled to any of the benefits associated with such employment.
2. SECURITY: Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the DTF set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.
3. COOPERATION WITH THIRD PARTIES: The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the DTF, as necessary to ensure delivery or performance of Product.
4. WARRANTIES:
   1. PRODUCT PERFORMANCE: Contractor hereby warrants and represents that the Products acquired by the DTF under this Contract conform to the manufacturer’s specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.
   2. TITLE AND OWNERSHIP: Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by the DTF under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the DTF and hold the DTF harmless from any damages and liabilities (including reasonable attorneys’ fees and costs) arising from any breach of Contractor’s warranties as set forth herein.
   3. PRODUCT WARRANTY: Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be substantially free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer’s standard commercial warranty period, if applicable, or for a minimum of one year from the date of acceptance, whichever is longer (the “Product warranty period”).

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the DTF. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees (“extended warranty”).

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

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or DTF shall in no event be liable or responsible therefor.

Where Contractor, the Third-Party Software vendor, or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor’s warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer’s Product.

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

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

Contractor shall not be responsible for any modification of the Products made by the DTF without Contractor’s approval.

* 1. VIRUS WARRANTY: The Contractor represents and warrants that any Product acquired under the Contract by the DTF does not contain any known Viruses. Contractor is not responsible for Viruses introduced at a DTF site.
  2. DATE/TIME WARRANTY: Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor’s business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

* 1. WORKMANSHIP WARRANTY: Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The DTF must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.
  2. SURVIVAL OF WARRANTIES: All warranties contained in this Contract shall survive the termination of this Contract.
  3. PROMPT NOTICE OF BREACH: The DTF shall promptly notify the Contactor in writing of any claim of breach of any warranty provided herein.
  4. ADDITIONAL WARRANTIES: Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the DTF.
  5. NO LIMITATION OF RIGHTS: The rights and remedies of the State and the DTF provided in this clause are in addition to and do not limit any rights afforded to the State and the DTF by any other clause of the Contract.

1. LEGAL COMPLIANCE: Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the DTF. Failure to comply or failure to provide proof may constitute grounds for the DTF to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the DTF. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.
2. INDEMNIFICATION: Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify, defend, and save harmless the Department/State 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.
3. INDEMNIFICATION RELATING TO INFRINGEMENT: The Contractor will fully indemnify, defend and save harmless the Department and its officers, commissioners, employees, representatives, and agents without monetary limitation from and against any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses), arising out of or related to any claim of, or action for, infringement of a United States Letter Patent, copyright, trademark, trade secret or other third party intellectually proprietary rights in each case to the extent caused by any Services provided by Contractor hereunder, provided that the Department shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by the Department upon the furnishing of written notice and verified receipt, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor’s sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

Where a dispute or claim arises relative to a real or anticipated infringement, the Department may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Department shall require. Notwithstanding the foregoing, the Department reserves the right to join such action, at its sole expense when it determines there is an issue involving a significant public interest.

If any claim is brought against the Department for the unauthorized use of such product, information, service or thing, the Contractor will indemnify the Department for any expense due to such claim and will cooperate with the Department and the Attorney General in the defense of that claim.

1. BREACH OF CONFIDENTIALITY: Notwithstanding any other provision herein, 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).
2. LIMITATION OF LIABILITY: Except as otherwise set forth in the Indemnification, Indemnification Relating to Infringement, and Breach of Confidentiality paragraphs above, Contractor’s liability for any claim, loss of liability arising out of, or connected with the Services, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in the amount of five hundred thousand dollars ($500,000) per year ; provided however, that such dollar limitations 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.

1. DISPUTE RESOLUTION PROCEDURES: In the event of a dispute arising from this Agreement, the Department shall continue to be able to use the product(s) under the terms and conditions herein while the dispute is resolved. The Contractor and the Department agree that it is important to resolve any disputes regarding the performance of services, or otherwise arising under the Agreement, expeditiously.

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. The parties shall review each other’s position and attempt to reach a resolution. Unresolved disputes will be resolved by the Commissioner, or his/her designee, whose decision is final and binding. During this period all work required hereunder shall continue to be performed. If the Contractor pursues any legal remedy outside this process, the Contractor will continue to perform work in accordance with the Agreement and the direction of the Department until such proceedings may be concluded and Contractor will continue to be paid, less an amount determined by the State to be attributable to the disputed work. Disputes that go to litigation must be pursued in a court of competent jurisdiction within the State of New York. New York law (without regard to conflicts of law provisions) will govern the dispute. Nothing in this paragraph shall diminish the State’s right to terminate the Agreement.

*To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.*

1. SOFTWARE LICENSE GRANT: Where Product is acquired on a licensed basis the following shall constitute the license grant:
   1. LICENSE SCOPE: Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (e.g., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, however extensive, shall not diminish Licensor’s proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

Licensee and Contractor may agree to alternative licensing rights (e.g., subscription, term, virtual) for specific Products used by the Contractor in performing the services, provided such agreement is reached prior to Bid, Mini-Bid, IFB, or Contract award, as applicable. Such licensing rights will be specified in an applicable Purchase Order or other document approved by Licensee and Contractor.

* 1. LICENSE TERM: The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the license term shall be extended by the time period for testing, acceptance or trial.
  2. PRODUCT DOCUMENTATION: Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

* 1. PRODUCT TECHNICAL SUPPORT & MAINTENANCE Licensee shall have the option of electing the Product technical support and maintenance (“maintenance”) set forth in the Contract by giving written notice to Contractor any time during the contract term. Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance. Maintenance terms and any renewals thereof are independent of the expiration of the contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to Licensee, and (ii) help desk assistance at no additional cost, either by toll-free telephone or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Licensee does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

* 1. PERMITTED LICENSE TRANSFERS: As Licensee’s business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Site not originally specified in the license, including transfers within Agencies, between Agencies, and pursuant to governmental restructuring or reorganization (“permitted license transfers”). Licensees do not have to obtain the approval of Contractor for permitted license transfers, but must give 30 days prior written notice to Contractor of such moves and certify in writing that the Product is not in use at the prior Site. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.
  2. RESTRICTED USE BY THIRD PARTIES: Third parties retained by Licensee shall have the right to use the Product to maintain Licensee’s business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third party has executed, or agrees to execute, the Product manufacturer’s standard nondisclosure or restricted use agreement, which executed agreement shall be accepted by the Contractor (“Non-Disclosure Agreement”); and (iii) such third party maintains a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party’s compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.
  3. ARCHIVAL BACK-UP AND DISASTER RECOVERY: Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. The phrase “cold site storage” means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase “disaster recovery” means the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.
  4. CONFIDENTIALITY RESTRICTIONS: If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee’s use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.
  5. RESTRICTED USE BY LICENSEE Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

1. AUDIT OF LICENSED PRODUCT USAGE: Contractor shall have the right to periodically audit, no more than annually, at Contractor’s expense, use of licensed Product at any Site where a copy of the Product resides. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee’s security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee’s normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit. If the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor’s U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

1. NO HARDSTOP OR PASSIVE LICENSE MONITORING: Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee’s security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Licensee shall be entitled.
2. OWNERSHIP/TITLE TO PROJECT DELIVERABLES: This clause shall apply where Contractor is commissioned by the DTF to furnish project deliverables as detailed in the Purchase Order.
   1. DEFINITIONS:
      1. For purposes of this clause, “Products” means deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third-Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).
      2. For purposes of this clause, “Existing Products” means tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the project.
      3. For purposes of this clause, “Custom Products” means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for Authorized User under the Contract.
   2. TITLE TO PROJECT DELIVERABLES: Unless otherwise specified in writing in the Purchase Order, DTF shall have ownership and license rights as follows:
      1. Existing Products:
         1. Hardware - Title and ownership of Existing hardware Products shall pass to the DTF upon acceptance.
         2. Software - Title and ownership to Existing software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor (“Existing Licensed Product”), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to the DTF in accordance with the Contractor or Third-Party Software vendor’s standard license agreement; provided, however, that such standard license, must, at a minimum: (a) grant DTF a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises DTF as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the DTF’s satisfaction) and distribute Existing Licensed Product to the DTF up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or DTF’s Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the DTF is a State Agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the Third-Party Software vendor’s standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The DTF shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.
      2. Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to DTF the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor’s business. The DTF may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of DTF taking exclusive ownership and title to such Products. In such case, Licensee on behalf of the DTF shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purposes as stated in paragraph (b)(i)(2), above.
   3. TRANSFERS OR ASSIGNMENTS TO A THIRD-PARTY FINANCING AGENT: It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third-party financing by the DTF. The DTF shall make the sole determination of the acceptability of any financing proposal. The DTF will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, DTF may assign or transfer its rights in Licensed Products (existing or custom) to a third-party financing entity or trustee (“Trustee”) as collateral where required by the terms of the financing agreement. Trustee’s sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee’s rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee’s rights in such Licensed Product shall terminate immediately and DTF’s prior rights to such Existing Licensed Product shall be revived.
   4. SALE OR LICENSE OF CUSTOM PRODUCTS INVOLVING TAX-EXEMPT FINANCING (i.e., CERTIFICATES OF PARTICIPATION - COPS): The DTF’s sale or other transfer of Custom Products which were acquired by the DTF using third-party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Products, the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.
   5. CONTRACTOR’S OBLIGATION WITH REGARD TO THIRD–PARTY SOFTWARE: Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor’s standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the DTF at Contractor’s sole cost and expense.
3. PROOF OF LICENSE: The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer’s certified license confirmation certificates in the name of such Licensee; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

1. CHANGES TO PRODUCT OR SERVICE OFFERINGS:
   1. PRODUCT OR SERVICE DISCONTINUENCE: Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at Licensee’s option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five business days of Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

* 1. PRODUCT OR SERVICE RE-BUNDLING: In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers (“date of notice”) that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the DTF in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) shall submit the proposed re-bundling change to the DTF for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

September 2016

# Appendix C, 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**

* 1. 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.
  2. 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 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:

* + 1. a statement of all legal and/or factual grounds for disagreement with a specification or a procurement determination;
    2. a description of all remedies or relief requested; and
    3. copies of all applicable supporting documentation.

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

**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 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.

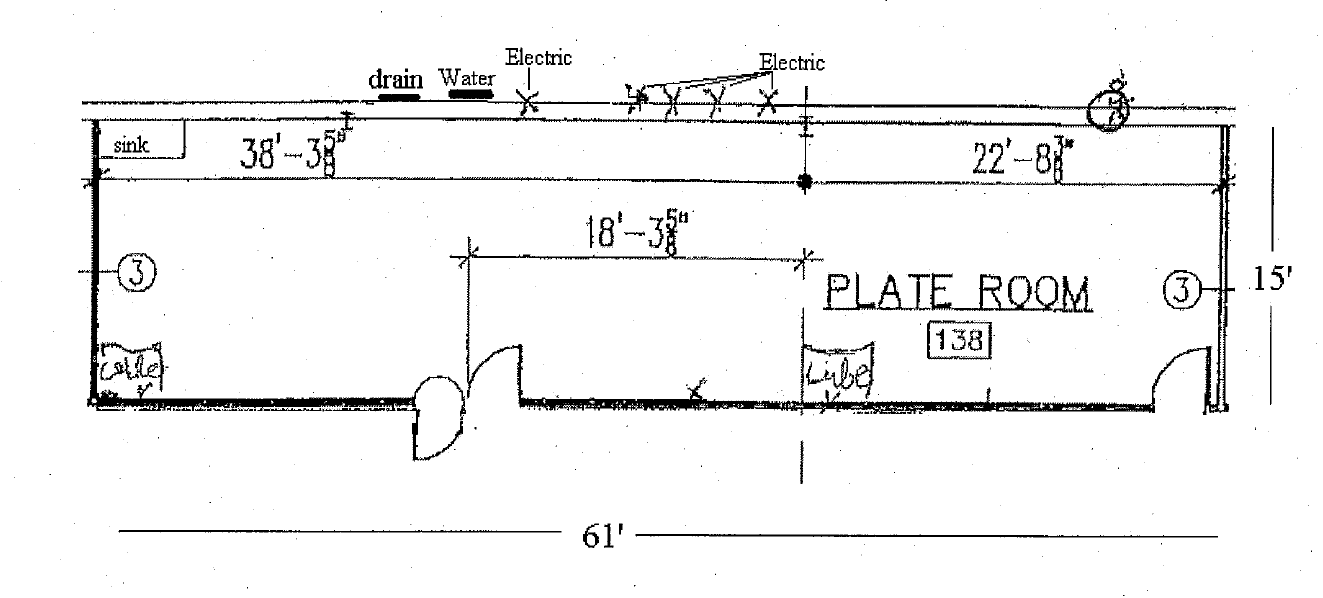
If a formal bid protest is received by DTF, a final determination on the protest must be made prior to OSC approval of the award under State Finance Law § 112. However, during the pendency of the protest, bid evaluation by DTF and subsequent OSC review of the recommended award may continue to progress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

# Exhibit A, Plate Room Blueprint



# Exhibit B, Workforce Employment Utilization

The **Workforce Employment Utilization, Exhibit B,** is published as a separate file and can be found at: <https://www.tax.ny.gov/about/procure>

# Attachment 1, Bidder’s Checklist

Bids must be submitted in an 8-1/2” x 11” 3-ring binder, with the following Attachments in the order presented: Four original signed copies of all are required.

Cover Page (page 1 of this IFB) completed with all requested information

Attachment 1 – Bidder’s Checklist showing all provided items checked

Attachment 2 – Contract Signatures Pages

Attachment 3 – Offerer Understanding of, and Compliance with, Procurement Lobbying

Guidelines

Attachment 4 – Offerer Disclosure of Prior Non-Responsibility Determination

Attachment 5 – Offerer Certification of Compliance with State Finance Law 139-k(5)

Attachment 6 –MacBride Fair Employment Principles

Attachment 7 – Minority and Women-Owned Business Enterprises - Equal Employment

Opportunity Policy Statement

Attachment 8 – EEO Staffing Plan

Attachment 9 – Vendor Responsibility Response Form (plus hard copy of the Vendor

Responsibility Questionnaire if not submitting electronically via the OSC

VendRep portal).

Attachment 10 –Encouraging Use of New York State Businesses in Contract Performance

Attachment 11 – DTF-202 Agreement to Adhere to the Secrecy Provisions of the Tax Law

and the Internal Revenue Code

Attachment 12 – Acknowledgment of Confidentiality of IRS Tax Return Information and

Internal Revenue Code Selected Confidentiality Provisions Pertaining to

Contractors (Technology Services)

Attachment 13 – Vendor Assurance of No Conflict of Interest or Detrimental Effect

Attachment 14 – EO-177 Certification

Attachment 15 – Contractor Sales Tax Certification Forms

Attachment 16 – Sexual Harassment Prevention Certification

Attachment 17 – Bidder’s Financial Response Form

*Do not include any additional information or Attachments that attempt to change and/or conflict with the Terms and Conditions of this IFB. Including any such additional information or Attachments may result in the bid being determined non-responsive and disqualified.*

**Attachment 2, Contract Signature Page**

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

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract C400724.

**Contractor Name NYS Department of Taxation and Finance**

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

Signature Signature

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

Print Name Print Name

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

Title Title

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

Date Date

CORPORATISTATE OF \_\_\_\_\_\_\_

ACKNOWLEDGEMENT

CORPORATION

STATE OF \_\_\_\_\_\_\_\_\_\_

COUNTY OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On this \_\_\_\_\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself depose and say that he is a member of the firm of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and that he executed the foregoing instrument in the firm name of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and that he had authority to sign same, and he did duly acknowledge to me that he executed the same as the act and deed of said firm of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the uses and purposes mentioned therein.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_NOTARY PUBLIC

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

Attorney General Office of the State Comptroller

# Attachment 3, 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 4, 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 State Finance 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 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

E-mail Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Has any New York State agency or authority made a finding of non-responsibility regarding the Offerer in the last four (4) years? (Please circle):

No Yes

If you responded “Yes” to Question 1, please answer the following questions:

1. Was the basis for the finding of the Offerer’s non-responsibility due to a violation of State Finance Law 139-j? (Please circle):

No Yes

1. Was the basis for the finding of the Offerer’s non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

1. 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):

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

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

No Yes

If you responded “Yes” to Question 5, please provide details regarding the termination below:

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

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

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

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

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

Offerer’s Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Offerer’s Name *(Please print):* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

# Attachment 5, Offerer 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.

Offerer’s Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Procurement Description, Contract or Bid Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

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

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

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

E-mail Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Attachment 6, MacBride Fair Employment Principles

**BIDDER’S NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Section 165 of the State Finance Law, 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, Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement

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

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

|  |
| --- |
| **EEO** |

|  |
| --- |
| **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.

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.

1. 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.
2. 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.

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

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_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**

\_\_\_\_\_\_\_\_% Minority and Women’s Business Enterprise Participation

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

\_\_\_\_\_\_\_\_% Women’s Business Enterprise Participation

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

(Authorized Representative)

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

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

# Attachment 8, EEO Staffing Plan

Submit with Bid or Proposal (Instructions attached)

|  |  |  |
| --- | --- | --- |
| **Solicitation No.:** | **Reporting Entity:** | **Report includes Contractor’s/Subcontractor’s:**  □ Work force to be utilized on this contract  □ Total work force |
| **Offeror’s Name:** | | □Offeror  □ Subcontractor  **Subcontractor’s name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Offeror’s Address:** | |

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 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **PREPARED BY (Signature):** | **TELEPHONE NO.:**  **EMAIL ADDRESS:** | | **DATE:** |
| **NAME AND TITLE OF PREPARER (Print or Type):** | | **Submit completed with bid or proposal M/WBE 101 (Rev 11/08)** | |

**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:**

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors’ total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading ‘Work force by Gender’
6. 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.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. 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** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**IISLANDER**

* **NATIVE INDIAN (NATIVE**  a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal

**AMERICAN/ ALASKAN NATIVE)** 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 9, Vendor Responsibility Response Form

Bidder’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bidders must complete a Vendor Responsibility Questionnaire in response to this IFB. 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://onlineservices.osc.state.ny.us](https://onlineservices.osc.state.ny.us/). For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by e-mail at [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 10, Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this Contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidders/proposers are reminded that they must continue to utilize small, minority- and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor’s optimal performance under the Contract, thereby fully benefitting the public-sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its Contractors. The State therefore expects Bidders/proposers to provide maximum assistance to New York businesses in their use of the Contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?  Yes  No

If “Yes,” identify New York State businesses that will be used and attach identifying information.

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

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

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

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

# Attachment 11, DTF-202

**DTF-202** (12/14) **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 (department) impose secrecy restrictions on:

* all officers, employees, and agents of the department;
* any person or entity engaged or retained by the 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;
* a contractor, Subcontractor, or any employee of a contractor or Subcontractor hired by the Department; 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.

New York State Tax Law section 1825 makes it a crime to intentionally disclose tax information. Such crime is punishable by a fine not exceeding $10,000, imprisonment not exceeding one year, or both. In the case of a corporation, a fine of up to $20,000 may be imposed. State officers and employees making unlawful disclosures are subject to dismissal from public office for a period of five years.

Unauthorized disclosure includes the willful browsing or accessing of taxpayer information by a person not authorized to view it. New York State Penal Law §§ 156.05 and 156.10, related to unauthorized access and computer trespass, make it unlawful to access or view taxpayer information from a computer system without a legitimate business need, punishable by up to four years imprisonment. As to employees, both of the department as well as employees of contractors, agents, and Subcontractors, this includes access by an employee who is not required by his or her work assignments to view that tax information. Unlawful access, viewing and/or disclosure may also be subject to other New York State Penal Law violations as may be applicable.

**Important note: there is never a work-related reason to access one’s own, a friend’s, or a family member’s tax information. In addition to other penalties that may be imposed, doing so may subject a person to immediate dismissal. Access to tax information and department systems is subject to monitoring.**

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 that apply to federal tax reports and returns. Pursuant to Internal Revenue Code sections 6103 and 7213, penalties similar to those in New York State law are imposed on any person making an unauthorized disclosure of federal tax information. In addition, Internal Revenue Code section 7213A prohibits the unauthorized inspection of returns or return information (“browsing”). The unauthorized inspection of returns or return information by any person is punishable by a fine not exceeding $1,000 for each access, or by imprisonment of not more than one (1) year, or both, together with the costs of prosecution.

**Individual certification**

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

|  |  |  |  |
| --- | --- | --- | --- |
| Signature | Name of person signing *(print)* |  | Date signed |
| Address *(number and street)* | City | State | ZIP code |

**Contractor (organization) certification**

I certify that I have read the contents of this *Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code*, represent that I am authorized to bind the organization to this agreement, and am executing this certification on behalf of the organization.

Prior to allowing any employee, agent, or Subcontractor of the organization to access department data, the organization will provide each such individual with the information contained herein, and have each execute this agreement in his or her individual capacity. The organization will provide a copy of all executed Forms DTF-202 to the department. In addition, the organization agrees to provide each such individual with such further training concerning the secrecy provisions discussed herein as may be required by the department, and will retain proof that each such individual has received such training, which shall be provided to the department at its request.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Organization name | | | | |
| Name of person signing *(print)* | Title of person signing | | | |
| Signature | | | Date signed | |
| Address *(number and street)* | | City | State | ZIP code |

# Attachment 12, Acknowledgement of Confidentiality of Internal Revenue Service (IRS) Tax Return Information

I \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby acknowledge that I have read the quoted provisions of §§6103, 7213, 7213A and 7431 of the Internal Revenue Code (IRC) and I understand that IRC §6103 imposes strict confidentiality requirements on current and former officers and employees of the Contractor who have or have had access to Federal tax returns or return information. I understand that §§7213, 7213A and 7431 of the IRC impose civil and criminal penalties for unauthorized inspection or disclosure of any tax return or return information. I further understand that:

1. Performance

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

1. All work will be performed under the supervision of the contractor or the contractor’s responsible employees.
2. The Contractor and the Contractor’s employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
3. Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
5. No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.
6. The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
7. The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.
8. Criminal/Civil Sanctions
9. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
10. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of $1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
11. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.
12. Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency’s security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A *(see IRS Publication 1075 Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure)*. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See IRS Publication 1075 Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.
13. Inspection

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS’ right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

Additionally, I acknowledge and understand that violation of these requirements of confidentiality could result in disciplinary action, including termination of employment.

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

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

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

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

City: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ State: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Zip Code: \_\_\_\_\_\_\_\_\_\_\_\_\_

# Attachment 13, Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Bidder offering to provide services pursuant to this IFB attests that its performance of the services outlined does not and will not create a conflict of interest with, nor position the Bidder to breach, any other contract currently in force with the State of New York.

Furthermore, the Bidder attests that it will not act in any manner that is detrimental to any State project on which the Bidder is rendering services. Specifically, the Bidder attests that:

1. The fulfillment of obligations by the Bidder, as proposed in the response, does not violate any existing contract or agreement between the Bidder and the State;
2. The fulfillment of obligations by the Bidder, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Bidder has with regard to any existing contract or agreement between the Bidder and the State;
3. The fulfillment of obligations by the Bidder, as proposed in the response, does not and will not compromise the Bidder’s ability to carry out its obligations under any existing contract between the Bidder and the State;
4. The fulfillment of any other contractual obligations that the Bidder has with the State will not affect or influence its ability to perform under any contract with the State resulting from this solicitation;
5. During the negotiation and execution of any contract resulting from this solicitation, the Bidder will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this solicitation, the Bidder will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Bidder, nor any former officer or employee of the Bidder who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Bidder has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

The Bidder should note that the State recognizes that conflicts may occur in the future because a Bidder may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

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

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

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

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

This form must be signed by an authorized executive or legal representative.

# Attachment 14, EO 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

* all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
* employers with fewer than four employees in all cases involving sexual harassment; and,
* any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor:

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

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

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

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

This form must be signed by an authorized executive or legal representative.

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# Attachment 15, Contractor Sales Tax Certification Forms

**Contractor** **Certification (ST-220-TD)**

<https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf>

**Contractor** **Certification to Covered Agency (ST-220-CA)**

<https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf>

For Frequently Asked Questions Tax Law Section 5-a, please review the following:

<https://www.tax.ny.gov/pdf/publications/sales/pub223.pdf?_ga=1.182183655.1161750456.1470166341>

**Attachment 16, Sexual Harassment Prevention Certification**

State Finance Law §139-l requires Bidders on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training to all its employees and that such policy, at a minimum, meets the requirements of section two hundred one-g of the labor law.

By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

The Bidder’s signature below certifies its compliance with State Finance Law §139-I.

Bidder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

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

***This form must be signed by an authorized executive or legal representative.***

If the Bidder cannot make the above certification, the Bidder must provide a statement with their bid detailing the reasons therefor:

**Attachment 17, Bidder’s Financial Response Form**

**Attachment 17, Bidder’s Financial Response Form**, is a Microsoft Excel spreadsheet and is published as a separate file that can be found at: <https://www.tax.ny.gov/about/procure>

This form is for the financial proposal Requirement as outlined in **Section 1.18**, **Price**. **The Bidder must complete the attachment in Excel.** Bidders must only use this form to present their pricing. Bidders must not modify or change this form. All costs associated with the Requirements of this IFB must be incorporated. Bidders must complete all highlighted fields on this form. **All prices presented are firm.**