



**Department of
Taxation and Finance**

Request for Proposals

20-100

Electronic Payment Processing Services

Appendices

Table of Contents

Appendix A – Standard Clauses for New York State Contracts.....	3
Appendix B – Bid Protest Policy.....	10
Appendix C – Change Control Procedure	13

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

	Page
1. Executory Clause	5
2. Non-Assignment Clause	5
3. Comptroller's Approval	5
4. Workers' Compensation Benefits	5
5. Non-Discrimination Requirements	5
6. Wage and Hours Provisions	5-6
7. Non-Collusive Bidding Certification	6
8. International Boycott Prohibition	6
9. Set-Off Rights	6
10. Records	6
11. Identifying Information and Privacy Notification	6
12. Equal Employment Opportunities For Minorities and Women	7
13. Conflicting Terms	7
14. Governing Law	7
15. Late Payment	7
16. No Arbitration	7
17. Service of Process	7
18. Prohibition on Purchase of Tropical Hardwoods	7-8
19. MacBride Fair Employment Principles	8
20. Omnibus Procurement Act of 1992	8
21. Reciprocity and Sanctions Provisions	8
22. Compliance with Breach Notification and Data Security Laws	8
23. Compliance with Consultant Disclosure Law	9
24. Procurement Lobbying	9
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	9
26. Iran Divestment Act	9
27. Admissibility of Contract	9

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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-

October 2019

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 (2 NYCRR § 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.

October 2019

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 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 clause. 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

October 2019

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
email: 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
email: mwbecertification@esd.ny.gov

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

October 2019

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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

Appendix B – Bid Protest Policy

DTF Protest Procedure

- Section 1 Applicability
- Section 2 Definitions
- Section 3 General Protest Guidelines
- Section 4 Protest Procedure
- Section 5 Appeal process

Section 1: Applicability

These guidelines set forth the procedure to be utilized when an Interested Party challenges a Contract Award by the New York State Department of Taxation and Finance. The guidelines shall apply to all Contract Awards made by the Department and approved by the New York State Office of the State Comptroller, including bid Solicitations, Sole Source procurements, Single Source procurements, and Emergency procurements.

Section 2: Definitions

- a) "Contract Award" is a written determination from DTF to an Offeror indicating that the DTF has selected a particular Offeror under the procurement process.
- b) "DTF" or "Department" means the New York State Department of Taxation and Finance.
- c) "Emergency" means an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk (see New York State Finance Law, Section 163.1.b).
- d) "Interested Party" means a participant in the procurement process and those whose participation in the procurement process has been foreclosed by the actions of the DTF and have suffered harm as a result of the manner in which the procurement was conducted.
- e) "Offeror" means the entity submitting an offer to DTF.
- f) "OSC" means the New York State Office of the State Comptroller.
- g) "Protest" means a written challenge by an Interested Party of a Contract Award that is subject to the approval of OSC.
- h) "Protesting Party" means an Interested Party who has filed a Protest.
- i) "Single Source" means a procurement in which, although two or more offerors can supply the required commodities or services, DTF, upon written findings setting forth the material and substantial reasons therefor, awards the contract to one offeror over the other (see New York State Finance Law, Section 163.1.h).
- j) "Sole Source" means a procurement in which only one offeror is capable of supplying the required commodities or services (see New York State Finance Law, Section 163.1.g).
- k) "Solicitation" means a document issued by DTF, requesting a response to a procurement need, including an Invitation for Bids, a Request for Proposals, or another written method seeking a bid or proposal for a specified purpose.
- l) "Successful Bidder" means the bidder or offeror whose bid or proposal has been selected for Contract Award by DTF.

Section 3: General Protest Guidelines

- 3.1. Any Interested Party will be given the opportunity to participate in the protest procedure. A Protest submitted to DTF must be in writing and must contain specific factual and legal allegations setting forth the basis on which the Protesting Party challenges the Contract Award by DTF. A Protest must include:
 - a) a statement of all legal and/or factual grounds for disagreement with a DTF procurement determination;
 - b) a description of all remedies or relief requested; and
 - c) copies of all applicable supporting documentation.
- 3.2. DTF may, at its sole discretion, waive any deadline or requirement set forth in these guidelines, or consider any materials submitted beyond the time periods set forth in these guidelines.
- 3.3. Where DTF deems appropriate, DTF may require the Protesting Party, DTF staff involved in the procurement, the Successful Bidder, or any other Interested Party, to address and/or submit further information with respect to additional issues raised by any DTF review of the procurement.
- 3.4. Nothing herein shall preclude DTF from obtaining information relevant to the procurement from any other source, as it may deem appropriate.

Section 4: Protest Procedure

- 4.1. Any Interested Party may file, by mail or electronic mail, a Protest with the DTF Director of Procurement. The following statement must be clearly and prominently displayed on the envelope or package or header of electronic transmittal: "Bid Protest of DTF Solicitation (Reference Number)" when being submitted in regards to a Solicitation and "Protest of DTF Contract Award (Reference Number)" when being submitted in regards to a contract being entered into on a non-competitive basis.
- 4.2. Timing of Protest submission:
 - a) Concerning Errors, Omissions or Prejudice in the Bid Specifications, Requirements or Documents - Protests which concern the drafting of bid specifications must be received by DTF at least ten 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 ten business days from the date of issue, Protests concerning the specifications must be received by DTF at least 48 hours before the time designated for receipt of bids.
 - b) Concerning Proposed Contract Award - Protests concerning a pending Contract Award must be received within ten business days after the notice of Contract Award or five business days after receiving a debriefing.
- 4.3. The DTF Director of Procurement may summarily deny a Protest that fails to contain specific factual or legal allegations, or where the Protest raises only issues of law that have already been decided by the courts or by the OSC Bureau of Contracts.
- 4.4. An Interested Party may file only one Protest with respect to a specific Solicitation.

New York State Department of Taxation and Finance
Request for Proposals (RFP) 20-100
Electronic Payment Processing Services

- 4.5. The DTF Director of Procurement shall issue a written determination addressing all issues raised by the Protest, as well as any relevant issues raised by his/her review of the procurement or contract. The determination shall make findings of fact and conclusions of law on any issues in dispute. All participants in the Protest and the Successful Bidder shall be provided a copy of the determination. The determination shall be made part of the procurement record.

Section 5: Appeal Process

- 5.1. The protest determination of DTF shall be deemed a final and conclusive agency determination unless a written notice of appeal is received no more than five business days after the date the written Protest decision is sent to the Offeror. Such notice of appeal must be filed in writing at the address set forth below:

Chief Financial Officer
New York State Department of Taxation and Finance
Reference: Bid Protest of DTF Solicitation (provide procurement reference number) (or, Protest of DTF Contract Award [Reference Number])
Building 9 W.A. Harriman Campus
Albany, NY 12227

- 5.2. The Chief Financial Officer shall review and make a final written determination on all appeals within ten business days of the date the Appeal is received. A protest appeal may not introduce new facts or legal allegations unless responding to issues newly raised as a result of the written protest determination.

Section 6: OSC Appeal Process

- 6.1. An Interested Party must file an appeal of the Department's determination of a Protest with the OSC Bureau of Contracts within ten business days of receiving DTF's final written determination on appeal.
- 6.2. In its appeal, the Interested Party shall set forth the basis on which it challenges DTF's protest determination. The Interested Party shall also include, as an exhibit to its appeal, a copy of the initial bid Protest submitted to the Department and the determination of such bid Protest issued by DTF.

The appeal must be in writing and a copy must be delivered to DTF and the Successful Bidder (unless the Successful Bidder is the appealing party in which case a copy of the appeal must be delivered to the original Protesting Party), and any other party that participated in the Protest conducted by DTF.

The appeal must be filed with:

Bureau Director at bidprotests@osc.state.ny.us
or
Bureau of Contracts
New York State Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236

July 2020

Appendix C – Change Control Procedure

Change Request (“CR”)	When a Change is contemplated, the appropriate DTF program area contact will discuss same with the Contractor. If DTF agrees with the proposed Change(s), DTF prepares a CR (see Change Request form, p.15).
Analysis of Implementation Alternatives	Upon receipt of the CR from DTF, the Contractor may discuss with DTF Program any revisions to the suggested implementation approach, prior to providing the Contractor’s Change Analysis, and Program may engage additional DTF staff as appropriate.
Change Analysis (“CA”)	The Contractor completes the CA (see Change Analysis Form, p.16), and submits it, along with any additional documentation required to support the CA, to the Department.
Proposed Fees	<p>One-time development: total project manager, business analyst, programmer, and tester costs for the Change(s), calculated based on the hours necessary to effectuate the Change(s) utilizing the titles and rates provided in the Contractor’s Cost Proposal in response to RFP 20-100.</p> <p>Other: The following fees, as negotiated between DTF and the Contractor, may be added to arrive at a final price to effectuate the Change(s), and will require justification from the Contractor. No add-on costs will be allowed.</p> <ul style="list-style-type: none"> • Transaction fees or flat fees: <ul style="list-style-type: none"> ○ Proposed new transaction fee(s) ○ Any flat one-time or recurring fee • Changes to existing transaction fees: <ul style="list-style-type: none"> ○ Current transaction fee for relevant transaction or report ○ Proposed change to current fee • Travel: Travel-related expenses shall be reimbursed in accordance with the NYS Office of State Comptroller guidelines
Negotiation	<p>After DTF and Contractor negotiate and document technical details, including justification of number of hours, and costs:</p> <ul style="list-style-type: none"> • DTF Change Control Manager and DTF Program Area Manager sign-off • Copy of approved CR and CA provided to the Program Area and the Change Control Manager.
Notification	The Department notifies the Contractor in writing of final approval of the Change Control, including a copy of the approved CR and CA.
Development/ Implementation	<p>Upon approval of the Change Control, development and implementation commences in accordance with an accepted methodology.</p> <p>PRIOR TO IMPLEMENTATION, the Contractor updates all related documentation.</p>

New York State Department of Taxation and Finance
Request for Proposals (RFP) 20-100
Electronic Payment Processing Services

Administrative Documentation	CR, CA, and all related documents become a part of the official Contract documentation.
Payment	Changes must be accepted by the Department, in writing, before invoices can be rendered. The Department's acceptance may be conditioned upon demonstration of successful completion of UAT and/ or Production implementation (as deemed necessary, in the Department's sole discretion) of the Change(s). Payment will be made only after Department acceptance of the Change and Contractor's submission of a proper invoice.

New York State Department of Taxation and Finance
Request for Proposals (RFP) 20-100
Electronic Payment Processing Services

New York State Department of Taxation and Finance
Change Request

Change Category: <input type="checkbox"/> Legislative <input type="checkbox"/> Enhancement <input type="checkbox"/> Fee	Contract #: Change Control #: Tax Type: Fiscal Year: Change Control Title:	Priority: <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low
Change Type: <input type="checkbox"/> Existing Return <input type="checkbox"/> New Return or Form <input type="checkbox"/> New Report or Report Change <input type="checkbox"/> New Method of Filing Option <input type="checkbox"/> New Method of Data Delivery <input type="checkbox"/> Other <input type="checkbox"/> Annual Cycle <input type="checkbox"/> Legislative Changes		
I. Description of process: System(s) Plan(s) Affected:		
II. Description of Change Requested:		
III. Why Needed:		
IV. Suggested Implementation Approach:		
V. Required Implementation Date: / /		VI. Date Change Analysis Due: / /
VII. Attachments:		
VIII. Approvals/Contacts		
A. DTF Change Control Manager:		
Signature:		Signature Date: / /
Office:		Phone: () -
B. DTF Program Area Manager:		
Signature:		Signature Date: / /
Office:		Phone: () -
Contact:		Phone: () -

New York State Department of Taxation and Finance
Request for Proposals (RFP) 20-100
Electronic Payment Processing Services

New York State Department of Taxation and Finance
Change Analysis

Change Category: <input type="checkbox"/> Legislative <input type="checkbox"/> Enhancement or <input type="checkbox"/> Fee		Contract: Change Control #: Tax Type: Fiscal Year: Change Control Title:		Priority: <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low	
I. Recommended Implementation Approach:					
II. Development/Implementation Timeframes:					
III. Impacts on other systems/plans:					
IV. Resource requirements :					
V. Additional information required for enhancement, attach the following information (if applicable):					
<input type="checkbox"/> Design Specifications <input type="checkbox"/> Workflow					
<input type="checkbox"/> Schedule of Deliverables					
VI. Proposed Fees (Attach additional documentation, if necessary):					
One-time development:					
Task breakdown:					
<ul style="list-style-type: none"> • Project Manager: hours • Business Analyst: hours • Programmer: hours • Tester: hours • Total Hours: hours 					
Other:					
VII. Approvals/Contacts					
A. Contractor Representative Name:					
Signature:				Date: / /	
Office:			Phone: () -		
B. DTF Change Control Manager Approval - Name:					
Signature:				Signature Date: / /	
Office:			Phone: () -		
C. DTF Program Area Manager Approval – Name:					
Signature:				Signature Date: / /	
Office:			Phone: () -		
D. OSC Approval:					