

STATE OF NEW YORK



DEPARTMENT OF TAXATION & FINANCE



REQUEST
FOR
PROPOSAL

**Financial Institution
Data Match Services**

June 30, 2008

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- Exhibit 1 - N. Y.S. Tax Law, Article 36 § 1701
- Exhibit 2 - Request File Layout
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- Exhibit 4 - Preliminary Contract
- Exhibit 5 - Draft Memorandum of Agreement

Administrative Exhibits

- Exhibit A - Bid Protest Policy
- Exhibit B - ST 220 Contractor Certification Forms

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- Attachment 1 - Bidder's Checklist
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Schedule of Events

Bid Timetable

<u>Date</u>	<u>Event</u>	<u>Description/Reference</u>
06/30/08	RFP Issued	
07/10/08 2 p.m. EST	Deadline for submission of written questions and requests for clarifications	Refer to page 9 for instruction.
	Deadline for Submission of Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines	Refer to page 9 for instruction. Submit Attachment A.
07/17/08 2 p.m. EST	Issuance of DTF responses to bidder questions and requests for clarification NOTE: The DTF written response to bidder questions is the only official DTF record bidders should use in preparing a bid proposal.	DTF responses will be posted on the DTF website. See page 10 for information.
07/31/08 2 p.m. EST	Deadline to file Notification of Intent to Bid	Refer to page 10 for instruction. Submit Attachment B.
08/07/08 2 p.m. EST	Final Date for receipt of bidder proposals	See Section VI for complete instructions.
08/28/08	Notification of DTF intent to award contract	See Section V.A.12 for detail.

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Post Award Timetable

Date
09/12/08

Event
Deadline for contract signature

DTF User Acceptance Testing begins within **fourteen (14) days** of contract approval.

Certification Date within **sixty-five (65) days** of the start of User Acceptance Testing

Implementation Date **within 10** days of Certification Date

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RFP Glossary

Terms used in this RFP shall have the following meanings:

Account - A record of financial transactions for an asset of an individual or business at a financial institution

Affiliate - Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

Attorney General (AG) - Attorney General of the State of New York

Agreement - The Contract which results from the award of this Request for Proposals.

Bid or Bid Proposal - An offer or proposal submitted by a Bidder to furnish a described product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term.

Bidder/Offerer – Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, form or corporation) which submits a Bid in response to a Bid Solicitation or Request for Proposals.

Contract - The writing(s) which contain the agreement of the Department and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by, but not limited to, applicable rules of law, bid documents and bid proposals.

Comptroller (OSC) - The Comptroller of the State of New York.

Contractor - Any successful Bidder(s) to whom a Contract has been awarded by the Department.

Debt – as defined in N. Y. S. Tax Law, Article 36 §1701 means all liabilities, including unpaid tax, interest, and penalty, that the Commissioner is required by law to collect and that have been reduced to judgment by the docketing of a New York State tax warrant in the office of a county clerk located in the State of New York or by the filing of a copy of the warrant in the office of the Department of State.

Department or DTF - The New York State Department of Taxation and Finance.

Disaster Recovery Plan – means Contractor's plan to provide disaster recovery services.

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

FIDM - means Financial Institution Data Match.

Financial Institution - means any financial institution authorized or required to participate in a financial institution data match system or program for child support purposes under federal or state law.

Financial Institutions - as defined under Sections 466(a)(17)(D)(i) and 469(A)(d)(i) of the federal Social Security Act and Section 111-o of the New York State Social Services Law, include banks and

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savings associations, Federal and State credit unions, institution-affiliated parties as defined in section 3(u) of the federal Deposit Insurance Act (12 U.S.C. 1813(u)), benefit associations, insurance companies, safe deposit companies, money-market mutual funds or similar entities authorized to do business in the state.

Large-Scale Data Matching - is defined as bidders providing electronic data matching services for a single client which involves matching a large volume of data (millions of records) from multiple (several hundred) entities that are separate and distinct, such as those with different management structures and/or IT systems, networks and/or media.

Request for Proposals (RFP) or Proposal - A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is “best value,” as defined by the State Finance Law.

Responsible Bidder - A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

Responsive Bidder - A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Department.

Subcontractor - Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

Tax Debtor - as defined in N. Y. S. Tax Law, Article 36 §1701 means a natural person or any entity other than a natural person named on a New York State tax warrant and identified thereon as a judgment debtor.

Time - All references to time contained in this RFP refer to the prevailing Eastern Standard Time.

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PREFACE

1. Proposal Questions/Inquiries:

Prospective Bidders will have the opportunity to submit written questions and clarification requests regarding this Request for Proposals (RFP). All questions must be submitted via e-mail (preferred), fax, or mail and received by the date indicated on the Schedule of Events. Questions must reference the relevant page and section of the RFP and must be directed to the following individual and office:

E-mail: bfs_contracts@tax.state.ny.us

Fax: (518) 435-8413

Written Correspondence: New York State Dept. of Taxation and Finance
Attn: Catherine Golden
Procurement Bureau
W.A. Harriman State Campus
Building 9, Room 234
Albany, NY 12227

Prospective Bidders should note that all clarifications and exceptions, including those relating to the terms and conditions of the RFP 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.

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

Catherine Golden	(518) 457-0954	bfs_contracts@tax.state.ny.us
Karen Brino	(518) 485-6091	bfs_contracts@tax.state.ny.us
Christine DiVeglia	(518) 485-6091	bfs_contracts@tax.state.ny.us
Cindy Isgro	(518) 485-6091	bfs_contracts@tax.state.ny.us

Contacting individuals other than the designated contacts listed above may result in the disqualification of the bidder's proposal – please refer to the procurement lobbying law, the Department guidelines posted on the Department's procurement website at: <http://www.nystax.gov/procurement>, and Section V – Proposal Conditions and Administrative Requirements.

2. Procurement Lobbying – Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines

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

Offerers are required to sign and submit Attachment A, Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines, by the date and time specified on the Schedule of Events.

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3. Proposal Amendments/Announcements

All amendments, clarifications and any announcements related to this bid will be posted on the Department's Procurement website at: <http://www.nystax.gov/procurement>.

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.

4. Response to Bidder Questions and Requests for Clarification

The DTF will provide a written response to all substantive questions and requests for clarification. Bidder questions, clarifications and DTF responses will be posted, as of the date listed on the Schedule of Events, on the DTF Procurement website at: <http://www.nystax.gov/procurement>.

5. Notification of Intent to Bid

If your firm is submitting a proposal in response to the RFP, a "Notification of Intent to Bid," Attachment B, should be completed and submitted by the date and time specified on the Schedule of Events. Contact information provided on this form will be used to notify bidders of RFP changes.

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

6. Submission of Bids

The bidder must submit proposals as instructed in Section VI, Proposal Submission.

SECTION 1 - INTRODUCTION

I INTRODUCTION

A Purpose

The New York State (NYS) Department of Taxation and Finance (DTF or Department) is soliciting proposals from vendors meeting the requirements set forth in Section II of this RFP to develop and operate a Financial Institution Data Match (FIDM) System to facilitate the identification and seizure of non-exempt assets of Tax Debtors identified by the Department pursuant to New York State Tax Law, Article 36 § 1701, Exhibit 1.

B Background

The Collections and Civil Enforcement Division (CCED) of the New York State Department of Taxation and Finance is charged with the collection of unpaid NYS Tax debts. Once voluntary efforts to collect these debts have been exhausted, the Department begins civil enforcement action by filing a lien against each Tax Debtor. The lien is filed with the Office of the County Clerk against the Tax Debtor's real property and with the Office of the New York State Secretary of State against the debtor's personal property. There are currently a little under one million individuals and businesses with NYS tax liens (600,000 businesses and 330,000 individuals). Approximately 110,000 liens are filed annually against businesses and 165,000 are filed annually against individuals.

N. Y. S. Tax Law, Article 36 § 1701, Exhibit 1, requires Financial Institutions (FI) that do business in NYS to participate in the development and operation of a data match system in conjunction with the Commissioner or the Commissioner's authorized designee using data exchanges to identify non-exempt assets of tax debtors. For each tax debtor identified, the FI will provide quarterly the name, address, social security number or other taxpayer identification number, and all account numbers and balances in each account. This matching process will be conducted quarterly.

The DTF FIDM program to be implemented for tax collection purposes is similar to the Child Support Enforcement Programs (CSEPS) operated by the New York State Office of Temporary and Disability Assistance (OTDA). The OTDA program was empowered by Federal Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), that provided, among other things, new enforcement remedies for child support. Specifically, PRWORA amended the federal Social Security Act to require states, under Section 466(a) (17), to establish procedures under which the State IV-D agency shall enter into agreements with financial institutions doing business in the State for the purpose of securing information leading to the enforcement of child support orders.

Participation in the DTF FIDM is governed by N. Y. S. Tax Law Article 36 § 1701 which states; "If a financial institution has a data match system developed or used to administer the Child Support Enforcement program of this state, and if that system is approved by the commissioner or the commissioners' authorized designee, the financial institution may use that system to comply with the provisions of this section."

Accordingly, two methods are permitted:

- Under Method 1 (All Accounts Method), the financial institution submits a file (to the successful bidder) containing all open accounts that is matched against records of all Tax Debtors.
- Under Method 2 (Matched Accounts Method), the financial institution receives a file (from the successful bidder) containing records of all Tax Debtors, matches the file against all open accounts, and submits a file of matched records to the successful bidder.

SECTION 1 - INTRODUCTION

The successful bidder must be able to handle both methods. The choice of method is made by the Financial Institution.

Many of the financial institutions operating in NY State do business in more than one state. In the OTDA program, Financial Institutions operating in more than one state have the option to conduct these matches directly with the federal government. The New York State Tax and Finance Data Match program does **NOT** include this option. Multi-state Financial Institutions are required to participate in the Tax Department Financial Institution Data Match program utilizing one of the methods identified above.

C Program Objectives

The Department's general objective is to enter into a contract with the successful bidder to develop and operate the FIDM System mandated by N. Y. S. Tax Law, Article 36 § 1701. The Department will require the successful bidder to establish, implement and maintain a direct relationship with the FIs for the purpose of ensuring accurate matching of the records of Tax Debtors identified by the Department with records of account holders at the FIs. The successful bidder will be required to:

- Establish and maintain an inventory of financial institutions doing business in New York State including banks, savings associations, federal and state credit unions, money market mutual funds and securities firms and provide the inventory to the Department;
- Contact each FI and establish the data connections and file requirements necessary to perform the match based on the individual needs of each FI. A wide range of file formats and media will be included and must be accommodated. The successful bidder must be prepared to process files on any media used by the FIs.
- Keep all information obtained from the Department and the Financial Institution confidential and prohibit any employee, agent or representative from disclosing that information to anyone other than the FI or DTF.
- Obtain signatures on a Memorandum of Agreement (MOA) between the FIs and related parties. DTF will draft the MOA and provide the MOA to the contractor to coordinate the execution of the agreement prior to starting the match process.
- Work with NYS DTF Information Technology Services (ITS) staff to establish the necessary data connections and file format to obtain the file of individuals and businesses via FTP and to return a single file in the proper format to DTF.
- Perform the data match function with all participating FIs on a quarterly basis. During the development phase the Department will establish a schedule of file transfers to be mutually agreed upon by DTF and the successful bidder for the electronic transmission of files between the Department and the contractor.
- Resolve all technical difficulties that impact the FIs' ability to participate in the match program.
- Notify DTF immediately upon becoming aware of an FI's non-compliance in providing all required data match information or services.

SECTION 1 - INTRODUCTION

D Contract Duration

The Contract term will be for a three-year period with two one-year renewals. The term of the Contract will commence upon approval of the Office of the New York State Comptroller. Renewals shall be accomplished through written amendment with the mutual agreement of the parties and the approval of the Office of the State Comptroller.

The fees bid in response to this RFP shall not be increased during the first year of the initial contract term. Thereafter, fees may be increased yearly on the anniversary date of the contract for each subsequent annual period of said term and for each renewal term. Any proposed increases in fee must be requested by the Contractor in writing sixty (60) days prior to the anniversary date of the contract. Such increase shall be subject to negotiation between the Department and the Contractor. Notwithstanding the foregoing, fee increases shall be limited to the lower of the percentage increase in the U.S. Department of Labor's Consumer Price Index for All Urban Customers (CPI-U) for the preceding twelve (12) months or five percent (5%). For the purposes of clarity, any percentage increase for the renewal terms shall only be applied to the prices in effect during the preceding twelve-month period. Renewals shall be upon mutual agreement of the parties.

E Implementation

The services solicited herein must be operational on or before December 10, 2008.

Upon award of a contract, a comprehensive implementation plan must be provided to DTF, which demonstrates the ability to:

- Work within the project schedule, achieve milestones and provide deliverable in a timely manner.
- Provide sufficient staffing for development, implementation, and on-going support throughout the entire duration of the contract.
- Establish and maintain effective working relationships with clients.
- Resolve problems which impact the delivery of services.

F Disengagement Plan

The Contractor will provide to DTF a detailed disengagement plan for its approval within 180 days of Contract approval. The Contractor must at minimum agree to:

- Remove all Department data from the Contractor's system including both on-site and off-site backup copies. Department data on storage devices such as tape, hard disk drives, CD's and DVD's must be physically destroyed or securely overwritten to prevent unauthorized disclosure of Department data.
- Provide a letter, signed by two officials authorized to bind the Contractor, affirming that the Contractor has complied with all terms and conditions of the disengagement plan.

SECTION II – QUALIFYING REQUIREMENTS

II QUALIFYING REQUIREMENTS (PASS/FAIL)

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

In response to this RFP, the bidder must provide sufficient detail of how each requirement is met including, but not limited to, the specific detail requested for each requirement. Failure to provide complete and detailed information may result in the bidder's proposal being deemed non-responsive.

The bidder's response to qualifying requirements will be evaluated in Phase 1 of the evaluation process, as outlined in Section VII of this RFP. Bidders that do not meet qualifying requirements will be disqualified from further evaluation.

A Technical Qualifications - Firm Experience/Exposure

DTF is seeking proposals from firms with a minimum of three years experience within the past five years in the design, development, implementation, and operation of a large-scale data matching system or systems, as defined in the RFP Glossary. This experience must have been gained prior to bid submission, and may have been obtained from one or more clients.

The bidder's experience must be with a system that was fully operational for a minimum of one year; that utilized electronic file exchange technology; and where the project milestones and deliverables were met.

Proposal Response Requirement

Bidder must complete Attachment 2, Qualifier Response Form for each client. The Qualifier Response Form must contain a narrative that demonstrates a minimum of three years experience within the past five years in the design, development, implementation, and operation of a large-scale data matching system or systems, as defined in the RFP Glossary. This experience must have been gained prior to bid submission, and may have been obtained from one or more clients. The bidder's narrative must describe a system that was fully operational for a minimum of one year; that this system utilized electronic file exchange technology; and that the project milestones and deliverables were met for this system. The narrative must also address the bidders experience with matching a large volume of data from multiple entities. The bidder must specify the contract start and end dates.

Note: The bidder should only submit more than one system project if it is necessary to demonstrate the total three years experience.

B. Insurance

At the time of proposal submission, the bidder's company and all staff must be insured against financial losses resulting from bidder's employees' actions.

Response Requirement

On **Attachment 2**, Qualifier Response Form, the bidder must provide its current insurance information and must attach a copy of its current certificate of insurance including a description of each type of coverage and the amount of coverage.

C. Financial Stability

The bidder must be a financially stable entity, such that it may initiate and perform its obligations

SECTION II – QUALIFYING REQUIREMENTS

through the duration of the project.

The DTF will not enter into a contract with any bidder who cannot demonstrate itself to be a financially stable entity capable of initiating and performing its obligations throughout the duration of the contract. The DTF will conduct an evaluation of the bidder's financial stability which will include, but not be limited to, a review of the bidder's equity position, liquidity, profitability trends and future prospect for financial growth. The financial stability evaluation will also include a review of the entity's officers and management team, its organizational structure and the financial and operating relationship between business units and divisions.

As a condition of any resulting contract, the Contractor must continue to evidence financial stability. The on-going financial stability of the Contractor will be evaluated based upon criteria similar to that used in the evaluation process. Annual financial statements prepared by an accountant in accordance with GAAP may be required to be submitted for review to the Department within 90 days of the fiscal year end. The annual financial statements will be required for the Contractor, as well as any of its subsidiaries or parent companies. Any material change in ownership of the Contractor, or material financial change of the Contractor, will require a reevaluation of the contract in its entirety by the Department.

Proposal Response Requirement

1 Financial Data

With Attachment 2, the bidder must submit proof of financial stability required for their particular organizational structures as set forth in the requirements listed in paragraphs a through h below. Audited/reviewed financial statements, required where indicated below, must have been prepared by a CPA in accordance with GAAP. All required information must be provided for any predecessor company within the last three years and any other subsidiary, affiliate, and/or related company requested by the Department. Any additional information requested must be submitted.

- a If the bidder is a subsidiary of a parent company that is publicly held, the bidder must comply with the preceding requirements by either (i) submitting separate, audited/reviewed, annual financial statements for the parent and subsidiary for the last three years OR (ii) by submitting audited/reviewed, annual financial statements for the parent for the last three years, unaudited/internal annual financial statements for the subsidiary for the last three years and the spreadsheet(s) used for consolidation.

In addition to either (i) or (ii) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required for both the parent and subsidiary.

- b If the bidder is a subsidiary of a parent company that is privately held, the bidder must either (i) comply with the requirement outlined in paragraph a OR (ii) submit separate annual, unaudited/internal company financial statements for both the parent and subsidiary for the last three years, a separate Dunn and Bradstreet Comprehensive Report (dated within 21 days of bid submittal) for both the parent and bidder, and a statement explaining why annual, audited/reviewed statements are not available.

In addition to either (i) or (ii) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required for both the parent and subsidiary.

- c If the bidder is a publicly held company and is not a subsidiary of a parent company, it must provide audited or reviewed annual financial statements for the last three years. Plus, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.

SECTION II – QUALIFYING REQUIREMENTS

- d If a bidder is a privately held company and is not a subsidiary of a parent company, it must either (i) fulfill the requirements set forth in paragraph c above **OR** (ii) provide annual, unaudited/internal company financial statements for the last three years, a Dunn and Bradstreet Comprehensive Report (dated within 21 days of bid submitted) and a statement explaining why annual audited/reviewed statements are not available.

In addition to either (i) or (ii) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.

- e If the bidder is not a bank, the bidder must provide its primary bank reference, including the name and phone number of the relationship manager;
- f The bidder must provide documentation attesting to any significant line(s) of credit that are available to the bidder. This documentation must include information identifying the source of such lines and detailing the maximum credit amount(s) available to the bidder, outstanding balance(s), and current amount(s) available;
- g The bidder must indicate whether or not it guarantees the debt of any other entity.
- h If the bidder is a subsidiary of a parent company, the bidder must explain, in detail, the inter-company financial relationship between the parent company and the bidder. The bidder must indicate if the parent company guarantees the debt of the bidder, or if the bidder guarantees the debt of the parent company.

2 Organizational Data

At a minimum, with Attachment 2, the bidder must provide:

- a organizational charts, including a listing and detailed description of:
- the bidder's primary business units and divisions;
 - key executives;
 - any and all subsidiaries; and
 - any and all minority interests, joint ventures, or other type of business affiliations.
- b brief biographies of its key officers and management.

SECTION III – TECHNICAL PROPOSAL REQUIREMENTS

III TECHNICAL PROPOSAL REQUIREMENTS

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the bidder to perform services required to meet program objectives. The Technical Proposal should demonstrate the qualifications of the bidder in the performance of services outlined in this RFP. If applicable, bidders should include details pertaining to any repeat requests bidder received to perform similar work.

Certain requirements are considered critical to successful contract implementation. This section outlines specific requirements the bidder must address to receive technical evaluation points in response to this proposal. The bidder must provide all information requested and must be as specific as possible to insure DTF can score the bidder's response appropriately. Incomplete or vague responses will negatively impact the technical score. A Technical Proposal that is incomplete in any material respect will be eliminated from consideration.

The bidder is solely responsible for providing references that are readily available to be contacted by DTF and will respond to reference questions. If DTF is unable to contact any reference, the bidder will be provided one opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded. The bidder may be eliminated if DTF is unable to verify required responses.

Cost information must not be included in Technical Proposal documentation.

A Bidder Experience and Reference Requirements

The bidder must have prior experience and a proven track record of successfully providing one or more clients with large-scale data matching services as defined in the RFP Glossary within the past five years. This experience must include the design, development, implementation and operation of a system utilizing electronic file exchange technology.

The Department is particularly interested in and will evaluate the bidder's prior large-scale data matching experience with federal and/or state government entities for data matching with multiple financial institutions. The Department will also evaluate, but will give less weight to, experience in data matching which is done for entities other than federal and state government entities.

Proposal Response Requirement

On Attachment 3, the bidder should provide information for client references for three (3) contracts which they have engaged in for large-scale data matching services within the past five years. The system for each contract submitted must have been fully operational for a minimum of one year as of the date of bid submission for this RFP. A maximum of two (2) alternate references may also be provided in the event an original reference cannot be contacted. Alternate references must be identified.

If the bidder is unable to provide three (3) contracts which meet the above criteria, the bidder should provide as many contracts as possible.

The Department is particularly interested in and will evaluate the bidder's prior large-scale data matching experience with federal and/or state government entities for data matching with multiple financial institutions.

The Department will also evaluate, but will give less weight to, other experience in large scale data matching.

The bidder must provide client references for these contracts for technical scoring. The Department will contact all client references to evaluate the bidder's past performance related to

SECTION III – TECHNICAL PROPOSAL REQUIREMENTS

the development, implementation of data matching services such as those requested by this RFP, and ongoing support of the services provided over the duration of the contract. The bidder shall be solely responsible for providing contact names and phone numbers for client reference who are readily available to be contacted by the Department and capable of responding to performance questions.

B IT System Requirements

1. Security and Confidentiality

A contractor must demonstrate its ability to assure the security, confidentiality, and integrity of the Department's data in accordance with federal and state tax law provisions, as well as generally accepted industry information security policies, procedures, and standards. The contractor will be required to sign confidentiality agreements as set out in Sections V.B.8 of this RFP. In addition, the contractor must have policies, procedures, controls, and software, in place which, at a minimum, ensures both physical security and data security.

The Department's requirements for security, confidentiality and integrity include all of the following:

- Documented information security policies that address the security, confidentiality, integrity, and availability of the contractor's information systems must be in place along with means to measure compliance with the aforementioned.
- Documented procedures and physical security controls which limit access to the Data Center, or an area where computer hardware is located, to only those individuals with job functions that require access (computer operations staff, quality control, systems programmers, etc.).
- Documented procedures and logical data access controls which restrict access to information stored within the computer system to only those individuals who require access to such information to perform job-related functions.
- Network security controls that ensure the contractor's information systems are protected from unauthorized access from outside the contractor's network.
- The Department shall have the right to send its officers, employees and representatives into the facilities of the contractor for inspection of the facilities and operations utilized in the performance of any work under the contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with any security requirement stated in the contract.

Proposal Response Requirement

On **Attachment 4**, the bidder must provide:

1. The bidder/contractor must describe how it will assure the security and confidentiality of the Department's data. The bidder/contractor's response will be evaluated to determine if the above requirements have been met.

The bidder/contractor should submit evidence of its existing security programs, policies and procedures which will be evaluated and scored to the extent they demonstrate:

- a. Programs, policies and procedures used to provide discretionary access control to systems and data. This information should address both physical security and electronic data security.

SECTION III – TECHNICAL PROPOSAL REQUIREMENTS

- b. Defined roles and responsibilities of all of those using the bidder/contractor's information systems.
- c. Separate computing environments for test, quality assurance, and production systems.
- d. Policies, procedures and controls for backup and recovery of data.
- e. Off-site storage and disaster recovery operations.
- f. A process and procedure which conforms to federal and state tax law requirements for controlled destruction of system output or other documents containing Tax Debtor identifying data (name, address, identification numbers, etc.).
- g. Protection against unauthorized access or disclosure 1) by employees, consultants, and others located at its facilities and 2) from external sources, such as dial-in or via Internet access.
- h. Processes to monitor the bidder/contractor's compliance with its information security policies, such as internal audit controls and/or independent audit programs.
- i. Network security controls or programs, such as virus protection, intrusion detection systems, and firewall rules that protect the bidder's information systems from unauthorized access.
- j. Programs, policies and procedures for the encryption of data in transit and data at rest.
- k. Programs, policies and procedures for data sanitation.
- l. Programs, policies and procedures for data breach notification and incident response.

Also, the bidder/contractor must submit a copy of any audits, internal or external, performed within the past three years that cover the requirements set forth in this section. Summary audit results or redacted audits are acceptable, as necessary, to address confidentiality concerns. Summaries should include information relating to the adequacy of the bidder/contractor's security measures including any deficiencies found. The bidder should provide a description of the progress of its remediation activities if deficiencies had been reported.

2 Communications Environments

The Department's preferred method for file transfers to and from the Department is via the internet. The Department has approved the use of Open SSH with its built-in secure file transfer protocol (SFTP) for all Internet based file transfers. Alternative methods of file transfer will be evaluated and must be approved by the Department. The Department uses an UNIX/LINUX based hardware platform for all file transfers to outside contractors. All components of the file transfer system need to be compatible with UNIX/LINUX. The contractor's hardware for this connectivity must be compatible with the Department's existing firewalls. This connection will need to meet all Department and industry standard security measures, including using the standard TCP port (22) for Open SSH. File transfer methods that will **not** be supported by the Department are analog and digital dial-up, DSL, and VAN.

SECTION III – TECHNICAL PROPOSAL REQUIREMENTS

a. Electronic Data File Exchange

The bidder must have the capacity to engage in electronic data file exchange with the Department, and must use an electronic data exchange protocol acceptable to the Department. It will be the Contractor's responsibility to implement compatible software with these products. Data file exchange processes that are specifically unacceptable are: magnetic tapes, email, paper, CD, floppy Disc, removable drives, and analog or digital dial up, Value Added Network connection software, respectively. The Department has approved the use of Public/Private Key authentication for the SFTP protocol, and as such, requires the use of the SSH2, 1024 byte, RSA algorithms in the key generation.

Proposal Response Requirement

The Department requires electronic data file exchange, to and from the Department. The Department would prefer this exchange via the Internet. The bidder must provide on **Attachment 5**:

- A detailed narrative describing the bidder's proposed method of electronic data file exchange.
- A detailed narrative describing the bidder's data communication security measures.

Please note, generic system information, white papers and/or promotional material are not sufficient to meet the requirements of this proposal. The bidder must indicate its approach to each of the areas listed above.

b. Technology Upgrades

The contractor must agree to make technological changes in order to meet upgrades to industry supported standards.

Proposal Response Requirement

The bidder must indicate on **Attachment 5** they agree to make technological changes to meet upgrades to industry supported standards.

3. File Processing

During the development phase, the Department will establish a schedule to be mutually agreed upon by the Department and the successful bidder for the electronic transmission of files between the Department and the contractor. The contractor must adhere to this schedule of file transfers. Files must be processed timely. Contractor must store a minimum of twelve (12) generations of scheduled Contractor to DTF Return files. Exhibit 2, Request File Layout, represents the file layout of the data the contractor will be required to process. Exhibit 3, Return File Layout, represents the file layout of the data the contract will be required to provide to DTF. The file layouts and transmission schedule will be finalized during the development phase.

Proposal Response Requirement

On **Attachment 6**, the bidder must agree to adhere to the file exchange schedule and the minimum file back up.

SECTION III – TECHNICAL PROPOSAL REQUIREMENTS

4. IT Staff

Sufficient staff must be assigned to complete the Development Phase in a timely manner and to provide adequate support during the term of the contract. The Department would prefer to have continuity of staff from the development phase to ongoing support after certification. Sufficient IT staff must be assigned to communicate and coordinate resolution of any issues that may occur, correct any problems, and implement any changes within two (2) business days unless otherwise agreed to in writing. The Department reserves the right to request additional staff, as well as staff substitutions for work-related cause.

Proposal Response Requirement

On **Attachment 7**, the bidder must agree it will assign the requisite staff necessary to develop, test and implement the services requested within this RFP within the time frames detailed under the "Post Award Timetable," and to successfully maintain the IT system during the life of the contract.

The bidder must submit a narrative which describes the process and procedures in place for notifying customers of issues encountered with the production system. This must include method of notification, identify personnel (roles) involved in the notification, coordination of the resolution, and implementation of the changes needed to resolve the problem.

A general staffing plan must be provided. The plan must include the following staffing details; i.e. a listing of titles assigned to the project by the bidder (ex. Project Manager, Applications programmer(s), Network/Communications Specialists, Business Analyst, Testing Staff, other roles as applicable), the number of staff assigned in each of the titles identified, and a general description of the requisite skills required by your organization and/or possessed by staffing in each title (ex., education, professional or technical certifications and years experience for assigned staff).

5. Change Control Process

Generally accepted data processing procedures and practices recommend that all system changes be implemented using methodology that assures the reliability, availability, and integrity of the information system. The bidder should have an established change control process in place.

Proposal Response Requirement

On **Attachment 8**, the bidder must provide a description of the Change Control process in use. This must include the roles of staff involved in the review, evaluation, and approval of system changes, and a description of the testing processes, including environments utilized for testing.

C. Insurance

Prior to the commencement of the work to be performed by the contractor hereunder, the contractor shall file with The People of the State of New York, the Department of Taxation and Finance (hereinafter referred to as the "Department"), Certificates of Insurance evidencing compliance with all requirements contained in the contract. Such Certificates shall be of form and substance acceptable to the Department.

Acceptance and approval by the Department does not and shall not be construed to relieve contractor of any obligations, responsibilities or liabilities under the contract.

SECTION III – TECHNICAL PROPOSAL REQUIREMENTS

All insurance required by the contract shall be obtained at the sole cost and expense of the contractor; shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to the Department; shall be primary and non-contributing to any insurance or self insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to the New York State Department of Taxation and Finance, W. A. Harriman State Office Building Campus, Procurement Bureau, Building 9 Room 234, Albany, New York, 12227, Attention: Ms. Catherine Golden, Assistant Director, and shall name The People of the State of New York, its officers, agents, and employees as additional insureds thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

Not less than thirty (30) days prior to the expiration date, the contractor shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.

The contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Department. Such approval shall not be unreasonably withheld.

The contractor shall require that any subcontractors hired carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The contractor shall cause all insurance to be in full force and effect as of the commencement date of the contract and to remain in full force and effect throughout the term of the contract and as further required by the contract. The contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the contractor shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.

The contractor, throughout the term of the contract, or as otherwise required by the contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
2. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.

SECTION III – TECHNICAL PROPOSAL REQUIREMENTS

3. The contractor shall maintain, or if subcontracting professional services shall certify that Subcontractor maintain errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.
 - a. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by the contract.
 - b. If coverage is written on a claims-made policy, the contractor warrants that any applicable retroactive date precedes the effective date of the contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time work under the contract is completed.
4. Employee dishonesty coverage on money, securities or property other than money and securities including property in the contractors care, custody or control in an amount of \$2,000,000 per occurrence. The coverage shall include all employees including contract and temporary, whether identified or not, acting alone or in collusion with others.

Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Department, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if contractor waives or has waived before the casualty, the right of recovery against the Department or (ii) any other form of permission for the release of the Department.

The insurance requirement will be monitored by the Department during the term of the contract and the contractor may be required to periodically adjust the amount of the insurance level. The Department must be provided written notice at least (30) days prior to the cancellation, non-renewal, or material alteration in coverage. Refer to Article IV of the Preliminary Contract (**Exhibit 4**).

Proposal Response Requirement

On **Attachment 9**, the bidder must agree to obtain the insurance coverage as defined in this section.

SECTION IV – COST PROPOSAL REQUIREMENTS

IV COST PROPOSAL REQUIREMENTS

Bidders must complete Attachment 10, Financial Response Form, in response to this requirement. All associated costs with the requirements of this RFP must be incorporated into the bidder's financial proposal response. No other add-on costs are permitted. The contractor will be reimbursed for a one-time development fee and quarterly for the number of Financial Institution data matches as outlined below. The Contractor will provide post development services at the request of the DTF and will be reimbursed at an hourly rate for programming and testing.

This proposal must be submitted in a separate sealed envelope, not included with the Technical or Administrative Proposal. Failure to comply with the mandatory format may result in disqualification.

A Development Fees

The bidder must provide the one-time development fee for services prior to the operational date, including but not limited to systems, development, testing and all program support requirements.

DTF will pay for Systems Development only after the total certification of all services associated with the certification dates.

B Quarterly Match Fee

The bidder must identify the quarterly per Financial Institution match fee for the first year of the initial term of the contract. This fee represents the quarterly fee charged *per financial institution* that contains data match information regardless of the number of matches made during that quarter.

Example: **Contractor bids a Quarterly Match Fee of \$10**

Bank A matches zero (0) records and payment is **\$0**.

Bank B matches one (1) record and payment is **\$10**.

Bank C matches five hundred (500) records and payment is **\$10**.

The \$10 fee was selected for ease of computation and does not represent the amount the Department expects in response to this RFP.

C System Enhancement Services - Post Development Fees

After the system is operational, DTF may require additional programming and user acceptance testing in the event of changes mandated by the Department due to changes in policies, guidelines, rules, regulations, statutes or judicial interpretations. The bidder must identify the hourly programming rates and User Acceptance Testing (UAT) rates for systems enhancement services.

Any proposed increase to the fee must be requested by the Contractor in writing sixty (60) days prior to the anniversary date of the contract. Such increase shall be subject to negotiation between the Department and the Contractor. Notwithstanding the foregoing, fee increases shall be limited to the percentage increase in the U.S. Department of Labor's Consumer Price Index for the preceding twelve (12) months, or five percent (5%), whichever is smaller.

Additional payment information is in Administrative Requirements, Section V.B.13 and Exhibit 4, Preliminary Contract, Section VII.

SECTION IV – COST PROPOSAL REQUIREMENTS***Proposal Response Requirement***

The bidder must complete Attachment 10, Financial Response Form. This proposal must be submitted in a separate sealed envelope, not included with the Technical or Administrative Proposal. Failure to comply with the mandatory format may result in disqualification.

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

V PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

This Section outlines conditions concerning the RFP and the bidder's response requirements related to any awarded Contract.

A Proposal Conditions

These conditions are directly related to the submission of bids in response to this RFP.

1 Issuing Agency

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

2 Solicitation

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

3 Liability

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

4 Proposal Ownership

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

5 Timely Submission

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

6 Non-Collusive Bidding Certification (Reference State Finance Law Section 130-d and Appendix A, Clause 7)

- a By submission of this bid, bidder and each person signing on behalf of any bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
 - i 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;
 - ii 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
 - iii No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

- b A bid shall not be considered for award nor shall any award be made where (a), (i), (ii), and (iii) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (i), (ii), and (iii) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid was made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

7 Proposal Effective Period

The bidder's proposal must be firm and binding for a period of at least 90 days following the bid proposal due date.

8 Bidder Proposal Clarification

The Department reserves the right to require a bidder to provide clarification and validation of its proposal, to the satisfaction of the Department, through any means the Department deems necessary. Failure of a bidder to cooperate with the Department's effort to clarify a proposal may result in the proposal being labeled as non-responsive and be given no further consideration or a reduced evaluation score.

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

9 Bid Opening

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

10 Bid Evaluation and Selection

See **Section VII: Proposal Evaluation**, regarding bid selection and evaluation methodology. To the extent permitted by law, bidder proposals shall not be disclosed, except for purposes of evaluation and approval, prior to approval of any resulting Contract by the Office of the State Comptroller. Submitted proposals may be reviewed and evaluated by any personnel or agents of the Department, other than one associated with a competing Bidder.

11 Disqualification for Past Performance and Findings of Non-Responsibility

The bidder may be disqualified from receiving awards if the bidder, or anyone in the bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or Contracts or is deemed non-responsible.

12 Bidder Notification of Intent to Award

The successful bidder(s) will be advised of selection by the Department through the issuance of a "Notification of Award Letter". Bidders whose bids have been rejected by the Department in response to this RFP shall be notified of such rejection.

13 Contract Approval

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

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

14 Disclosure of Contract Award Information

Public announcements or news releases pertaining to Contracts shall not be made prior to Contract award. Requests concerning bid information or the evaluation of a bid submitted will be considered under the Freedom of Information Law (FOIL) only after Contract negotiations are complete and the Contract is approved by the State Attorney General's Office and the Office of the State Comptroller.

15 Debriefing Sessions

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

16 Bid Protest Policy

The Department's procedures for handling protests of bid awards are set forth in **Exhibit A: NYS DTF Bid Protest Policy**.

17 Reserved Rights

The Department of Taxation and Finance reserves the following rights to:

- a Change any of the scheduled dates stated herein.
- b Amend RFP specifications after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all Bidders.
- c Withdraw the RFP, at its sole discretion.
- d Not award a Contract as a result of this RFP.
- e Re-bid this RFP, at its sole discretion.
- f Eliminate a mandatory requirement when all Bidders cannot meet such requirement.
- g Evaluate, accept and/or reject any and all proposals, in whole or in part, and to waive technicalities, irregularities, and omissions if, in the Department's considered judgment, the best interests of the State 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.
- h Require the bidder to demonstrate, to the satisfaction of the Department, any information presented as a part of their proposal.
- i Use proposal information obtained through the Department's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP.
- j Make typographical corrections and correct computational errors with the concurrence of the bidder.
- k Determine a tie breaking mechanism for award of the Contract to serve the best interests of the Department.

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

- l Negotiate with the successful bidder(s) within the scope of the RFP to serve the best interests of the State.
- m Conduct Contract negotiations with the next ranked responsible bidder should the Department be unsuccessful in negotiating an agreement with the selected bidder.

B Administrative Requirements

Bidders must provide the following administrative information in response to this RFP.

PLEASE NOTE: Where indicated, the bidder must provide the information requested under the Proposal Response Requirement with its bid proposal.

1 Proposal Transmittal Letter

A transmittal letter must be signed by an official authorized to bind the bidder to proposal provisions.

Proposal Response Requirement

The transmittal letter must include the following information:

- the complete name and address of the bidder entity;
- the Federal or Taxpayer Identification Number of the entity;
- an affirmation that the proposal is binding for the required period indicated in Section V.A.7;
- any restrictions under which the bidder's primary negotiators will operate during Contract negotiation in; and
- designation of any trade secret, confidential or proprietary information in response to Section V.B.3 of this RFP.

2 Designation of Prime Contact and Authorized Contract Negotiators

During the bid evaluation and Contract negotiation, the Department requires direct access to bidder personnel who have full authority to make commitments on behalf of the bidder. The Bidder must identify and certify a prime contact authorized to respond on behalf of the bidder. The prime contact is responsible for responding to any evaluation clarification and for disseminating information to appropriate bidder personnel.

Bidders must also identify individual(s) who will serve as authorized Contract negotiators and any restrictions under which their primary negotiators will operate.

Any change in designation must be submitted in writing to the Department and include a revised form.

Proposal Response Requirement

Complete and submit Attachment C, Designation of Prime Contact form.

3 Proposal Security/Freedom of Information Law

During the evaluation process, each bidder's proposal will be held in strict confidence by the 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 the approvals of those agencies for the final Contract or except as required by law.

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

Public inspection of the bids is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The bids are presumptively available for public inspection. The Freedom of Information Law (Article 6 of the New York State Public Officers Law) provides that agencies may deny access to records or portions thereof that... "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise... (Public Officers Law section 87.2(d)).

This exception would be effective both during and after the evaluation process.

Where a Freedom of Information request is made for trade secret or other information which, if disclosed, may cause substantial injury to the competitive position of the bidder, the bidder must explain with particularity why the designated portion of the bid meets the statutory criteria for exemption from disclosure.

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.

The public officers' code of ethics (section 74 of the Public Officers Law) sets the standard that no officer or employee of a State agency shall disclose confidential information that he acquires during the course of his official duties.

These standards control the confidentiality of a bidder's proposal unless the Department grants a petition for records access in accordance with the Freedom of Information Law.

Proposal Response Requirement

If the bid proposal contains trade secrets or other confidential or proprietary information, the Bidder must submit a written request to except such information from disclosure with their bid proposal.

With the bid transmittal letter, required under Section V.B.1 above, the bidder must specifically identify the page number, line or other appropriate designation of the information that is a trade secret, confidential or proprietary and explain, in detail, the reason such information would be exempt from disclosure. Notations in the header, footer or watermark of the bid document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information.

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.

In applying for protection under section 87.2(d) of the Public Officers Law, it would be unacceptable for the Contractor to indiscriminately categorize the entire proposal as meeting the requirements of that section.

In applying for trade secret protection, it would be unacceptable to indiscriminately categorize the entire proposal as such. 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 552, as well as the Freedom of Information Act. The Department will review applications and grant protection under section 87.2(d) of the Public Officers Law, if appropriate.

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

4 Appendix A – Standard Clauses for New York State Contracts

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

5 Ethics Compliance

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

6 Vendor Responsibility

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

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

Proposal Response Requirement

Bidders must complete a Vendor Responsibility Questionnaire. Bidders are invited to file the required Vendor Responsibility Questionnaire online via the OSC New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at 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 helpdesk@osc.state.ny.us. Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at www.osc.state.ny.us/vendrep or may contact one of the Department’s designated contacts.

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

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

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

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

questionnaire.

7 Contractor Certification - Tax Law 5-A Amended April 26, 2006

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

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

Proposal Response Requirement

Exhibit B provides Contractor certification forms and instructions for completing the forms. ST-220-TD must be filed with and returned directly to the DTF address provided on the form. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF. Completion of the form at the time of bid submission is not required; however, Form ST-220-TD must be filed and returned to DTF upon notification of Contract award.

Form ST-220-CA must be provided to the DTF 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 forms within two business days of request.

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

Vendors may call DTF at 1-800-698-2931 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>.

8 Secrecy Provisions

a New York State Department of Taxation and Finance Secrecy Provisions

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

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

All other information regarding the Department of Taxation and Finance's operations, including, without limitation, automated tax system information, shall likewise be treated as confidential. For these purposes, "automated tax system information" includes, but is not limited to, functional, technical and detailed systems design; systems architecture; automated analysis techniques; systems analysis and development methodology; audit selection methodologies; and information regarding proprietary products such as software packages.

The Contractor acknowledges and agrees that only those persons with a need to know confidential information (as defined in this section) for purposes of performing their job responsibilities under any contract awarded as a result of this RFP shall be afforded access thereto.

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

The Department shall have the right to send its officers and employees into the facilities of the Contractor in order to inspect such facilities and Contractor operations to determine whether the confidentiality of the information described in this section is being adequately safeguarded. Remedial actions prescribed by the Department in the event that confidentiality is not being satisfactorily safeguarded shall be immediately implemented by the Contractor. If the Contractor fails to take such measures immediately, the failure shall be a material breach of the contract, and the Department may resort to any of the remedies available to it under the contract.

The Department and the IRS shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Agreement safeguards.

If the Contractor fails to perform its obligations as set forth in the New York State Department of Taxation and Finance Secrecy Provisions and Federal Secrecy provisions outlined below, the Contract may be cancelled immediately upon written notice. At its sole discretion, the Department may elect not to allow a cure period for such failure.

Proposal Response Requirement

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

9 MacBride Fair Employment Principals

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.

Proposal Response Requirement

The bidder is responsible for the completion and submission of Attachment F, Nondiscrimination in Employment in Northern Ireland - MacBride Fair Employment Principals.

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS**10 Procurement Lobbying Act**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DTF and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DTF and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified in the Preface and this Section of the Request for Proposal. DTF employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two findings within a four-year period, the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Information related to the Procurement Lobbying Law and DTF guidelines can be found on the Department’s Procurement website at: <http://www.nystax.gov/procurement> or the New York State Office of General Services website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Contacting individuals other than the designated contacts listed in the Preface section of this document during the restricted period may result in the disqualification of the bidder’s proposal - please refer to the procurement lobbying law and the department guidelines posted on the Department’s procurement website at: <http://www.nystax.gov/procurement>.

a Offerer Disclosure of Prior Non-Responsibility Determinations

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

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

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or Contract documents, as applicable, for Procurement Contracts. The attached form is to be completed and

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

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.

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

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

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

Proposal Response Requirement

Bidders must complete Attachment G, Offerer Disclosure of Prior Non-Responsibility Determination and Attachment H, Offerer's Certification of Compliance with State Finance Law 139-k(5).

11 Equal Employment/Business Participation Opportunities for Minority Group Members and New York State Certified Minority/Women-Owned Businesses

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS Contracts.

a Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that the provisions of Appendix A clause 12 – Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to work in connection with the State Contract.

b Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as Subcontractors and suppliers on this Contract for the provision of services and materials. To locate New York State Certified M/WBE, the directory of Certified Businesses can be viewed at:

http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp.

12 Independent Contractor

It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor and in no manner shall they be deemed employees of the Department, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of the

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

Contact awarded under this RFP, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance, including worker's compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

13 Payments

All payments will be made in accordance with Article 11-A of the New York State Finance Law. Additional information related to payment can be found in Section VII of Exhibit 4, Preliminary Contract.

The Contractor must maintain adequate records, as prescribed by the Department, to substantiate all claims for payment and, upon request, must make those records available to the Department for examination and copying.

The OSC offers an "electronic payment" option in lieu of issuing checks. An electronic payment authorization form is available at the OSC Website at www.osc.state.ny.us. This form can also be obtained by e-mailing OSC at epunit@osc.state.ny.us or by phone at 518-474-4032.

14 Public Announcements

Public announcements or news releases relating to this RFP or the resulting agreement shall not be made by any Bidder or its agent without the prior approval of the Department. Such approval shall not be considered until an executed Contract is in place.

15 Proposed Extraneous Terms

Proposals must conform to the terms and conditions set forth in this RFP and the Preliminary Contract, **Exhibit 4**. Any objections to terms and conditions set forth in this section of the RFP (**Section V**) and the Preliminary Contract, **Exhibit 4**, must be provided to the Department in the bidder's Administrative Proposal. Material deviations to the terms and conditions set forth in this RFP (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection.

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

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

Proposal Response Requirement

The bidder must attach any objections to the terms and conditions outlined in this section or the Preliminary Contract, **Exhibit 4**.

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

SECTION V – PROPOSAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS

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

Acceptance and/or processing of the bid proposal shall not constitute such written acceptance of Extraneous Term(s) or a waiver of the Department's rights set forth above. Failure to object to any terms set forth in **Section V** of this RFP and the **Preliminary Contract, Exhibit 4:** shall be deemed to constitute acceptance thereof by the bidder.

SECTION VI – PROPOSAL SUBMISSION

VI PROPOSAL SUBMISSION

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

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

For your convenience, we have provided Attachment 1, Bidders Checklist, to assist you in meeting proposal submission requirements.

A Proposal Content and Organization

To facilitate the evaluation process, the bidder must organize its proposal into two distinct volumes, as follows:

- Volume 1: Qualifying, Technical and Administrative Response Forms
- Volume 2: Financial Response Forms

1 Volume 1 – Qualifying, Technical and Administrative Response Requirements

The Qualifying, Technical and Administrative Responses must include the following tabbed sections:

a Section 1 - Executive Summary

The bidder is required to provide an Executive Summary, directed to the Department's upper level management, which contains a summary of management considerations. Bidders should utilize this Section to demonstrate how their proposal, services, and/or products meet the Department's procurement objectives as outlined in Section I - Introduction.

The Executive Summary must address, at a minimum:

- i The executive commitment of the bidder, including the responsible executives and a description of their responsibilities in the organization and in this particular procurement;
 - ii Plans for the acquisition, merger or other restructuring of the organization or that of any sub-contractor;
 - iii The bidder's strategic direction, including current technology policies, ongoing commitment to research and development, and plans for future services and product lines which may affect the Program(s) and services required herein;
 - iv Conceptual overview of the solution that is being proposed for the program; and,
 - v A brief corporate history.
- b Section 2 - Response to the Qualifying Requirements as outlined in Section II of this RFP.
- c Section 3 - Response to the Technical Requirements as outlined in Section III of this RFP.
- d Section 4 – Response to the Administrative Response Requirements as outlined in Section V of this RFP and as follows:

SECTION VI – PROPOSAL SUBMISSION

- Transmittal Letter which includes the following information:
 - Identification of Proprietary/Trade Secret Information (Section V.B.3 of the RFP); and
 - The Bidder's proposed extraneous terms as outlined in Section V.B.15 of the RFP.
- Administrative Attachments as required in Section V.B of this RFP:
 - Attachment C: Designation of Prime Contact
 - Attachment D: Vendor Responsibility Form
 - Attachment E: Agreement to adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code, DTF-202
 - Attachment F: MacBride Fair Principals Form
 - Attachment G: Procurement Lobbying - Offerer Disclosure of Prior Non-Responsibility Determinations
 - Attachment H: Procurement Lobbying - Offerer's Certification of Compliance with State Finance Law 139-k(5)

2 Volume 2 - Cost Proposal Requirements

As outlined in Section IV, Cost Proposal Requirements, the Bidder must submit Attachment 10: Financial Response Form.

The fees proposed must be inclusive of all services and/or products contained in the bidder's Technical Proposal. All one-time development and operation fees must be included to ensure the Department can accurately determine the full life cycle cost of the procurement and fairly evaluate financial proposals.

B Submission of Proposals

The bidder must submit one (1) original and four (4) copies of Volume 1 and Volume 2 identified above. All volumes must be bound separately, must be clearly identified and must include page numbers.

To facilitate requests for information under the Freedom of Information Law (FOIL), contractors will be requested to provide two (2) copies on a CD of its complete proposal in a non-PDF format (e.g., MS Word, Excel, etc.) to allow for redaction of trade secret/proprietary information.

Proposals must be received no later than the date and time identified in the Schedule of Events included with this RFP.

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

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

New York State Dept. of Taxation and Finance
Attn: Catherine Golden
Procurement Bureau
W.A. Harriman State Campus
Building 9, Room 234
Albany, NY 12227

SECTION VI – PROPOSAL SUBMISSION

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

“BID ENCLOSED”

RFP # 08-13

Financial Data Match Program

Bid Submission date and time

PLEASE NOTE: Mail deliveries requiring a signature of receipt should be addressed to the Department’s campus address however, the delivery service must be instructed to deliver bid documents to the following address:

**90 Cohoes Avenue
Green Island, NY 12183**

Under no circumstance will the Department consider any proposal received after the time and date specified in the RFP. In the event that a package is not labeled properly as described in this section, the Department reserves the right to inspect the contents of the package(s) to determine the contents. The bidder shall have no claim against the Department arising from such inspection and such inspection shall not affect the validity of the procurement. Notwithstanding, the Department’s right to inspect contents of the package(s), the bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

SECTION VII – PROPOSAL EVALUATION

VII PROPOSAL EVALUATION

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

The Department evaluates bidder proposals for goods and services in an objective, comprehensive manner to ensure proposals are evaluated uniformly and consistently. The evaluation process will be conducted as described in this section.

A Proposal Clarification

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

B Evaluation Process Overview

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

1 Phase One Evaluation - Proposal Screening

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

a Proposal Screening (Pass/Fail)

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

b Qualifying Requirements (Pass/Fail)

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

c Administrative Requirements

All proposals that pass screening and qualifying criteria will be evaluated to ensure completeness and conformance with the requirements outlined in Section V.B Administrative Requirements. Proposals which do not meet or conform to these requirements may be labeled as non-responsive and may not be given further consideration.

All proposals that pass this stage of the evaluation process will be further evaluated in Phase Two. Bidders not meeting the above requirements will be deemed non-responsive and will not be further evaluated.

SECTION VII – PROPOSAL EVALUATION

2 Phase Two Evaluation - Technical and Financial Points

In this stage of the evaluation, proposal responses will be scored using technical and financial points as outlined in this section. Evaluation teams comprised of Department personnel representing applicable program, technical, and administrative functions will be organized into two separate teams - technical and financial.

The Financial Evaluation will proceed concurrently and separately from the Technical evaluation.

a Technical Evaluation (40 points)

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

- i Bidder Experience and Reference Requirements
- ii IT System Requirements

b Financial Evaluation (60 points)

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

C Final Ranking/Contract Award

Upon completion of Phase Two, the Technical and Financial scores are combined. One contract will be awarded to the bidder whose proposal obtains the highest aggregate score.

The table below summarizes the evaluation point distribution:

Evaluation Component	Score
Technical Evaluation	40 points
Financial Evaluation	60 points
TOTAL	100 points

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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JUNE, 2006

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

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

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

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor

APPENDIX A

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has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

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

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business 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.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

EXHIBIT 1
N. Y. S. Tax Law, Article 36 § 1701

COMPLIANCE AND ENFORCEMENT INITIATIVES

Section 1701. Financial institution data match system for state tax collection purposes.

§ 1701. Financial institution data match system for state tax collection purposes.

1. Definitions. As used in this section:

- (a) "Debt" means all liabilities, including unpaid tax, interest, and penalty, that the commissioner is required by law to collect and that have been reduced to judgment by the docketing of a New York state tax warrant in the office of a county clerk located in the state of New York or by the filing of a copy of the warrant in the office of the department of state.
- (b) "Tax debtor" means a natural person or any entity other than a natural person named on a New York state tax warrant and identified thereon as a judgment debtor.
- (c) "Financial institution" means any financial institution authorized or required to participate in a financial institution data match system or program for child support enforcement purposes under federal or state law.

2. Financial institution data match system for state tax collection purposes.

- (a) To assist the commissioner in the collection of debts, the department must develop and operate a financial institution data match system for the purpose of identifying and seizing the non-exempt assets of tax debtors as identified by the commissioner. The commissioner is authorized to designate a third party to develop and operate this system. Any third party designated by the commissioner to develop and operate a financial data match system must keep all information it obtains from both the department and the financial institution confidential, and any employee, agent or representative of that third party is prohibited from disclosing that information to anyone other than the department or the financial institution.
- (b) Each financial institution doing business in the state must, in conjunction with the commissioner or the commissioner's authorized designee, develop and operate a data match system to facilitate the identification and seizure of non-exempt financial assets of tax debtors identified by the commissioner or the commissioner's authorized designee. If a financial institution has a data match system developed or used to administer the child support enforcement programs of this state, and if that system is approved by the commissioner or the commissioner's authorized designee, the financial institution may use that system to comply with the provisions of this section.

3. Each financial institution must provide identifying information each calendar quarter to the department for each tax debtor identified by the department who or that maintains an account at the institution. The identifying information must include the tax debtor's name, address, and social security number or other taxpayer identification number, and all account numbers and balances in each account.

EXHIBIT 1
N. Y. S. Tax Law, Article 36 § 1701

4. A financial institution that complies with this section will not be liable under state law to any person for the disclosure of information to the commissioner or the commissioner's authorized designee, or any other action taken in good faith to comply with this section.
5. Both the financial institution furnishing a report to the commissioner under this section and the commissioner's authorized designee are prohibited from disclosing to the tax debtor that the name of the tax debtor has been received from or furnished to the commissioner, unless authorized in writing by the commissioner to do so. A violation of this subdivision will result in the imposition of a civil penalty equal to the greater of one thousand dollars or the amount in the account of the person to whom the disclosure was made for each instance of unauthorized disclosure by the financial institution. That civil penalty can be assessed and collected under this chapter as if that penalty were tax.
6. A financial institution may disclose to its depositors or account holders that the department has the authority to request certain identifying information on certain depositors or account holders under the financial institution data match system for state tax collection purposes.

EXHIBIT 2 Request File Layouts

REQUEST FILE**DTF TO CONTRACTOR REQUEST FILE**

<u>FIELD NAME</u>	<u>FIELD DESCRIPTION</u>	<u>FIELD SIZE</u>	<u>COMMENTS</u>
<i>Record Type 00</i>			
<u>HEADER RECORD</u>			
RECORD TYPE	'00' Indicates header record	X(02)	Value '00'
CREATE-DATE	Identifies date file was created	X(08)	CCYYMMDD
FILE-DESCRIPTION	Identifies Contractor	X(60)	'NYS-DTF TO (Contractor)'
FILE-TYPE	Identifies file as a production file or test file	X(10)	Values are: 'PRODUCTION' or 'TEST'
FILLER		X(44)	Value spaces
<i>Record Type 01</i>			
<u>DETAIL RECORD</u>			
RECORD-TYPE	'01' Indicates detail record	X(02)	Value '01'
ID	Social security number or Federal identification number	X(09)	SSN or FID requested
ID INDICATOR	Indicator whether ID is SSN or FID	X(1)	S-SSN, F-FID
FID-NAME	FID Name	X(40)	When ID Indicator is 'F', this field contains the FID name. Otherwise, it is blank.
SSN-FIRST-NAME	SSN first name	X(20)	When ID Indicator is 'S', this field contains the first name of the SSN holder. Otherwise, it is blank.
SSN-LAST-NAME	SSN last name	X(20)	When ID Indicator is 'S', this field contains the last name of the SSN holder. Otherwise, it is blank.
DTF-USE-1	Field for DTF use only.	X(10)	Must be passed back as is. Contains the collection case id (E123456789).
DTF-USE-2	Field for DTF use only.	X(14)	Must be passed back as is. Contains the taxpayer's internal id.
DTF-USE-3	Field for DTF use only.	X(1)	Must be passed back as is. Contains the request indicator. e.g. A - all, Q - quarterly
Filler		X(7)	Value spaces
<i>Record Type 99</i>			
<u>TRAILER RECORD</u>			
RECORD-TYPE	'99' Indicates trailer record	X(02)	VALUE '99'
RECORD-COUNT	Total records including header and trailer	9(08)	
FILLER		X(114)	Value spaces

The file layout is representative of the data the contractor will be required to process.
The file layout will be finalized during the development phase.

EXHIBIT 3 Return File Layouts

RETURN FILE**CONTRACTOR TO DTF RETURN FILE**

<u>FIELD NAME</u>	<u>FIELD DESCRIPTION</u>	<u>FIELD SIZE</u>	<u>COMMENTS</u>
<i>Record Type 00</i>			
<u>HEADER RECORD</u>			
RECORD TYPE	'00' Indicates header record	X(02)	Value '00'
CREATE-DATE	Identifies date file was created.	X(08)	CCYYMMDD
FILE-DESCRIPTION	Identifies Contractor	X(60)	
FILE-TYPE	Identifies file as a production file or test file	X(10)	'(Contractor) TO NYS-DTF' Values are: 'PRODUCTION' or 'TEST'
FILLER		X(420)	Value spaces
<i>Record Type 01</i>			
<u>DETAIL RECORD</u>			
RECORD-TYPE	'01' Indicates detail record	X(02)	Value '01'
ID	Social security number or Federal identification number	X(09)	Matched SSN or FID
ID INDICATOR	Indicator whether ID is SSN or FID	X(1)	S-SSN, F-FID
FID-NAME	FID Name	X(40)	When ID Indicator is 'F', this field contains the FID name. Otherwise, it is blank. Pass back FID name on request file.
SSN-FIRST-NAME	SSN first name	X(20)	When ID Indicator is 'S', this field contains the first name of the SSN holder. Otherwise, it is blank. Pass back SSN first name on request file.
SSN-LAST-NAME	SSN last name	X(20)	When ID Indicator is 'S', this field contains the last name of the SSN holder. Otherwise, it is blank. Pass back SSN last name on request file.
DTF-USE-1	Field for DTF use only.	X(10)	Contains the collection case id (E123456789). Pass back DTF-USE-1 on request file.
DTF-USE-2	Field for DTF use only.	X(14)	Contains the taxpayer's internal id. Pass back DTF-USE-2 on request file.
DTF-USE-3	Field for DTF use only.	X(1)	Contains the request indicator. e.g. A - all, Q - quarterly. Pass back DTF-USE-3 on request file.
ACCOUNT NUMBER	Taxpayer's account number	X(20)	
ACCOUNT BALANCE	Account Balance	S9(9)	Numeric, whole dollars. If account balance indicator is 0, then field will be 0.
ACCOUNT BALANCE INDICATOR	Indicator whether account balance is not provided, average or current.	X(1)	e.g. not provided, average balance, current balance
ACCOUNT TYPE	Numeric indicator of type of account.	X(2)	e.g. savings, checking, payroll

EXHIBIT 3 Return File Layouts

RETURN FILE**CONTRACTOR TO DTF RETURN FILE**

<u>FIELD NAME</u>	<u>FIELD DESCRIPTION</u>	<u>FIELD SIZE</u>	<u>COMMENTS</u>
<i>Record Type 01</i>			
<i><u>DETAIL RECORD</u></i>			
	<i>(continued)</i>		
PAYEE STREET LINE 1 ADDRESS	Matched ID's street line 1 address	X(30)	
PAYEE STREET LINE 2 ADDRESS	Matched ID's street line 2 address	X(30)	
PAYEE CITY	Matched ID's city	X(18)	
PAYEE STATE	Matched ID's state	X(2)	Standard State abbreviation
PAYEE ZIP	Matched ID's zip	X(9)	
PAYEE COUNTRY	Matched ID's country	X(2)	Standard Country abbreviation
PAYER EIN	Financial source EIN	X(9)	
PAYER NAME	Financial source name	X(40)	Financial source name for levy service
PAYER LINE 1 ADDRESS	Financial source line 1 address	X(30)	Line 1 address for which a levy should be mailed to
PAYER LINE 2 ADDRESS	Financial source line 2 address	X(30)	Line 2 address for which a levy should be mailed to
PAYER CITY	Financial source city	X(18)	City for which a levy should be mailed to
PAYER STATE	Financial source state	X(2)	Standard State abbreviation
PAYER ZIP	Financial source 9 character zip	X(9)	
Filler		X(11)	Value spaces
<i>Record Type 99</i>			
<i><u>TRAILER RECORD</u></i>			
RECORD-TYPE	'99' Indicates trailer record	X(02)	VALUE '99'
RECORD-COUNT	Total records including header and trailer	9(08)	
FILLER		X(490)	Value spaces

The file layout is representative of the data the contractor will be required to process.
The file layout will be finalized during the development phase.

EXHIBIT 4 PRELIMINARY CONTRACT

THIS AGREEMENT made this XX day of XXX, 2008, by and between the New York State Department of Taxation and Finance, located at Building 9, W.A. Harriman State Office Campus, Albany, New York 12227 (hereinafter referred to as the “Department”, “DTF”) and XXXX., with principal place of business located at XXXX (hereinafter referred to as the “Contractor”).

WHEREAS, the Department issued Request for Proposals (RFP) 08-13 on XXX, for Financial Institution Data Match Services; and

WHEREAS, the Contractor timely submitted a bid proposal to provide the services set forth in RFP 08-13; and

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

WHEREAS, the Contractor is prepared to undertake performance of Financial Institution Data Match Services according to the terms of this Agreement, and recognizing that turnover of the functions to the Department or, at the direction of the Department, to a successor contractor is a fundamental requisite of such undertaking.

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

Article I. Definitions

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

Agreement means this contract C400XXX, which includes all documents identified in **Article II: Entirety of Agreement**.

Attorney General means the Attorney General of the State of New York.

Contractor means <enter winning bidder name>.

Department or DTF means the New York State Department of Taxation and Finance.

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

FIDM means Financial Institution Data Match.

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

Proposal means the Proposal submitted by Contractor in response to RFP 08-13 including Volume 1 (Qualifying, Technical and Administrative Requirement Response Forms) and Volume 2 (Financial Rate Response), both dated XXX, and any written clarifications thereto made by Contractor. The Proposal is attached hereto as Appendix 1.

RFP means the Financial Institution Data Match Services Request for Proposals issued by the Department on June 30, 2008 (RFP 08-13) including all appendices and exhibits contained therein, and any written clarifications or amendments thereto made by DTF. The RFP is attached as Appendix 2.

This Agreement means that portion of the Agreement preceding the signatures of the parties in execution.

Article II. Entirety of Agreement

This Contract C400XXX shall consist of the documents listed below, which are fully incorporated by reference. In the event of a conflict between or among the provisions of the Contract, such conflict shall be resolved by reference to the documents in the order listed with Appendix A having precedence:

EXHIBIT 4

PRELIMINARY CONTRACT

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

Attachment E of the RFP – Secrecy Provision Agreement (DTF-202);

Base Contract; Amendments and Clarifications to the RFP and Proposal (including questions and answers);

The Request for Proposal excluding Appendix A, Attachment E, Amendments and Clarifications to the RFP, and Questions and Answers.

Contractor Proposal excluding amendments or clarifications to the Proposal.

Article III. Contract Term

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

The State shall have the right to re-negotiate the terms, conditions and fees of this Agreement in the event applicable New York State (State) or federal policies, rules, regulations, laws and guidelines are altered from those existing at the time this Agreement is executed in order to be in continuous compliance therewith. This will be accomplished through written amendment requiring the approvals of the New York State Attorney General and the Office of the State Comptroller.

The fees set forth in Article VII shall be in effect for the first year of the Agreement. Rates may be increased annually, and for each renewal period, by the lower of the percentage change in the Consumer Price Index for All Urban Customers (CPI-U) as reported by the U.S. Department of Labor, Bureau of Statistics for the preceding twelve (12) month period or five percent (5%) per annum over the prior year's Fee. Such increases shall be subject to negotiation between the Department and the Contractor.

The Contractor must provide the Department written notification of any increase at least sixty (60) days prior to renewal.

Article IV. Assurances

1. The Contractor warrants that it has carefully reviewed the needs of the State for financial institution data match services, as described in the RFP and its attachments and otherwise communicated in writing by the State to the Contractor, that it has familiarized itself with the State's specifications, and it warrants that it can provide such services as represented in its Proposal and the other documents incorporated into this Agreement.
2. The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.
3. The Contractor warrants and affirms that the terms of this Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.
4. Contractor shall comply with Sections II. B. and III. C of RFP 08-13, entitled Insurance. DTF's acceptance or approval of the Certificates of Insurance required thereunder shall not diminish any of Contractor's obligations, responsibilities or liabilities hereunder.

EXHIBIT 4 PRELIMINARY CONTRACT

Article V. Contractor Requirements

- A. The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement. The Contractor shall:
1. Identify a Project Director who will be responsible for directing work to be done under this Agreement. The Department will appoint a Project Administrator to work with the Contractor's Project Director. The Department's Project Administrator and the Contractor's Project Director will hold meetings in such form and at the time and place and at a frequency specified by the Department's Project Administrator.
 2. Provide for normal day-to-day communications through the Contractor's Project Director, who shall be responsible for maintaining the level of liaison and cooperation with the Department necessary for proper performance of all contractual responsibilities. The Contractor's Project Director will be expected to communicate through and meet with the person so designated by the Department, when requested by the Department's Project Administrator or the designated Department employee. The purposes of such communications or meetings include, but are not limited to, resolving FIDM related issues and ensuring the timely delivery of FIDM related materials.
 3. Staff the project with personnel assigned to the positions as identified in the Contractor's proposal. The personnel assigned to the positions identified in the Contractor's proposal are considered to be essential to this project. Prior to diverting any of the personnel assigned to the positions to other projects, the Contractor shall notify the Department reasonably in advance and shall submit justification, including proposed substitutions in sufficient detail to permit evaluation of the impact on the project. The Contractor reserves the right, subject to the written consent of the Department, to substitute personnel of equal or superior qualifications in the event that circumstances necessitate the replacement of previously assigned personnel. Any such substitution shall be made only after consultation with and the written consent of the Department's Project Administrator and after written documentation of the circumstances requiring the changes has been provided to the Department. The Department shall respond to any such substitutions in a reasonable and timely manner in order to avoid delays to the Project schedule. The Department reserves the right to review the resumes, interview and perform reference checks on proposed personnel. If the Contractor reassigns an employee to another project without the written consent of the Department, all previous charges for that individual's time will be credited back to the Department.
 4. Replace any employee whose continued presence would be detrimental to the success of the project for work related causes with an employee of equal or better qualifications. The State's Project Administrator will exercise exclusive judgment in this matter and will be required to make such a request in writing to the Contractor's Project Director.
 5. Notify the Department in writing of any changes in the person(s) designated to bind the Contractor.
 6. Ensure that all contacts by Contractor personnel with other external organizations, to fulfill the objectives of this Agreement, are cleared and coordinated by the Department's Project Administrator. The Department will fulfill this role promptly, so as not to impede the Contractor's timely performance hereunder.
 7. Notify the Department within twenty-four (24) hours of each problem that threatens the successful completion of the project, including a recommendation for resolution whenever possible.

EXHIBIT 4 PRELIMINARY CONTRACT

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8. Agree that no aspect of Contractor performance under this Agreement will be contingent upon State personnel or the availability of Department resources with the exception of a) all proposed actions of the Contractor specifically identified in this Agreement as requiring Department acquisition, approval, policy decisions, or policy approvals; or b) the normal cooperation which can be expected in such a contractual relationship. Such actions by the Department will not be unreasonably delayed.
 9. Cooperate with any other Contractor who may be engaged by the Department to carry out responsibilities associated with this Agreement and immediately take into account changes mandated by the Department due to changes in policies, guidelines, rules, regulations, statutes or judicial interpretations.
 10. Recognize and agree that any and all work performed outside the scope of this Agreement shall be deemed by the Department to be gratuitous and not subject to charge by the Contractor.
 11. Perform in accordance with the RFP and the Contractor's proposal.
 12. Comply with the Secrecy requirements set forth in Article VIII herein.
 13. Immediately notify the Department in the event of any unauthorized disclosure of tax debtor information.
 14. Pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all federal, State, and local laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract.

Article VI. Department Responsibilities

The Department will send files of data for financial institution data match consistent with RFP 08-13 Sections XX.

The Department will compensate the Contractor for said data match services based on the terms set forth herein under Article VII, Fees and Payment.

Article VII. Fees and Payment

A. Fees

- | | |
|--|----------|
| 1. Development Fee | \$ _____ |
| 2. Quarterly Match fee per Financial Institution | \$ _____ |
| 3. Post Development Programming hourly rate | \$ _____ |
| 4. Post Development User Testing hourly Rate | \$ _____ |

The Department agrees to pay the Contractor for the services provided as follows:

1. Development

The Contractor shall fully and properly perform the DTF Development tasks required by this Agreement. The DTF shall pay to the Contractor upon completion of the implementation process and receipt of a proper invoice for such full and proper performance.

2. Ongoing Operations

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The Contractor shall fully and properly perform the FIDM Ongoing Operations tasks required by this Agreement. The DTF shall reimburse the Contractor on a quarterly basis for each Financial Institution that resulted in a data match information regardless of the number of matches upon receipt of a proper invoice.

3. System Enhancement Services – Post Development Fees

Payment for services performed hereunder will be made monthly, in arrears, upon receipt of a proper invoice in accordance with Article 11A of the New York State Finance Law.

All payments will be made in accordance with Article 11A of the New York State Finance Law.

Article VIII: Secrecy Provisions

A. Required Forms

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

B. New York State Department of Taxation and Finance Secrecy Provisions

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

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

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

Article IX. Reserved Rights

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

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

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

Article X. Performance Standards and Remedies

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

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cause of action against the Department for any kind of damages, loss of profits, expenses, or other remuneration of any kind.

In the case of termination or non-renewal of the Contract, the Contractor will comply with the disengagement process prescribed by the Department as set forth in Section I of the RFP and adhere to the required disengagement plan.

Article XI. Dispute Resolution

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

Article XII. Continuing Administrative Requirements

A. Financial Stability

The Contractor must continue to evidence financial stability as a material condition of this Contract. Financial stability may be evaluated annually based upon criteria similar to that used in the bidding process to include the reports required for Contractor's particular organizational structure as set forth in Section II of RFP 08-13 and as otherwise required by the Department. In addition to annual financial statements, interim financial statements based on the period ending six-months from the fiscal year end must be submitted for review by the Department within 45 days of the end of the six month financial period. The interim financial statements will be required as set forth in Section II of RFP 08-13.

Contractor shall immediately notify the Department of a significant expansion of the Contractor or a change in ownership. Any significant change in ownership or significant expansion will require a re-evaluation of the Contract in its entirety by the Department.

B. Vendor Responsibility

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

C. Sales and Compensating Use Tax

Contractors shall certify annually on the anniversary date of this agreement and prior to any renewal that the Contractor, as well as any affiliates, subcontractors and subcontractors' affiliates making sales delivered within New York State has a valid certificate of authority to collect New York State and local sales and compensating use tax. Contractor shall provide such documentation upon request by the Department.

D. Procurement Lobbying

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

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from making contacts during the restricted period to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a).

E. Most Favored Nations

If contractor, during the term of this Agreement, enters into comparable arrangement with any other customer or New York State agency providing greater benefit or more favorable terms, this Agreement shall thereupon be deemed amended to provide the same to the Department.

F. Disaster Recovery/Fail Safe Operations

1. The Contractor shall develop and make available to the Department for its review and approval a Disaster Recovery Plan for the services provided under the Contract. The Contractor must periodically provide the Department with reasonable access to that portion of the Disaster Recovery Plan relevant to the services provided under the Contract. The Contractor must provide the Department with any reports or findings of any regulatory agency dealing with the Contractor's disaster recovery capabilities, unless the Contractor is prohibited from making such disclosure by law or by any such agency. The Contractor must also make available any reports of its independent auditors relating to such plans. The Contractor must provide the Department with reasonable access to the results of any tests of the Contractor's disaster recovery capabilities conducted by the Contractor or any third party. The Contractor must provide an annual briefing to the Department related to its disaster recovery strategy.
2. Contractor shall no later than twenty-four hours after the occurrence of an event requiring activation of the disaster recovery plan, inform the Department that the plan has been activated. At that time, Contractor shall provide the Department with a description of the nature and extent of the disaster, an assessment of the impact on all services provided pursuant to the contract and a description of the specific recovery actions with their associated timeframes which have been or will be taken as part of the plan. Contractor will provide appropriate periodic updates of the recovery process as required by the Department.
3. Contractor agrees to provide the Department with any updates to the disaster recovery plan with respect to the services provided under the Contract, and/or any plans to implement recommendations resulting from routine testing of the disaster recovery plan. Contractor must maintain, test (at least once annually on a date as reasonably determined by the Department), and update the plan as necessary throughout the duration of the Contract (including any extensions and/or transition periods). In addition, Contractor must inform the Department on an annual basis as to the status of disaster recovery operations.

G. Litigation Support

Contractor shall make available appropriate personnel during the term of the Contract (including any extensions and/or transition periods) to provide affidavits and/or testify in any administrative or judicial proceeding as to the accuracy and trustworthiness of the systems and procedures utilized to provide services under the contract.

H. Compliance with Federal and NYS Laws

Contractor shall ensure that it is in compliance with all Federal and New York State laws. In the event of a conflict between any provision of this contract and a Federal or New York State law, the statute shall prevail in all cases. Failure by the Contractor to so comply may result in termination or expiration of all, or the affected portion of, this Contract.

I. Merger Clause

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The parties will agree that the Contract is the complete and exclusive statement of the agreement between them, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of the Contract.

J. Ownership of Data/Data Security

1. All data under the Contract shall be and remain the property of the Department, and the Contractor must, during the term of the Contract (including any extensions and/or transition periods), provide the Department with access to any such data maintained by Contractor.
 - a) The Contractor must, in accordance with applicable law and the instructions of the Department, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate data integrity safeguards against the deletion or alteration of such data.
 - b) In the event that any data is lost or destroyed because of any act or omission of Contractor or any noncompliance with the obligations of Contractor under the Contract, then Contractor shall, at its own expense, use its best efforts to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the Department for any costs incurred by the Department in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.
 - c) Promptly after the termination or expiration of the Contract, the Contractor shall provide all such data still within its possession or that of its subcontractors to the Department, or sanitize such data, consistent with applicable law and instructions from the Department.
2. Upon the Department's reasonable request, Contractor shall correct, to the extent practicable, at Contractor's sole expense, reports, data and/or image output that fail to achieve requirements.

K. Restrictions on Use of Data

Contractors are prohibited from using any information for any purpose other than the performance of the Department's Contract. At Contract expiration or termination, all information pertaining to this Contract must be handled in the manner prescribed by the Department as set forth in the Disengagement Phase of the Contract.

Article XIII. Termination

A. Termination for Cause

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

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

Otherwise, if the Contractor fails to perform its material obligations under this Contract and does not, within ten (10) calendar days after receiving written notice from the Department describing the alleged material failure, either,

1. Cure the material failure; or

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

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

1. Failure to meet the obligations and responsibilities imposed on the Contractor by Articles IV and V.
2. Breach of a material term or condition of any subcontract by Contractor or the subcontractor, if such breach materially impairs Contractor's performance under this Agreement with the reasonable likelihood that a material failure to perform by the Contractor will occur.
3. Contractor is or becomes insolvent or a party to any bankruptcy or receivership proceeding, or any similar action affecting the affairs or property of Contractor.
4. Failure of the Contractor to remain a responsible contractor consistent with applicable New York State law, regulations and/or policy.
5. A finding that the information filed by the Contractor in accordance with the requirements for Vendor Responsibility is incomplete, untrue or inaccurate.
6. A finding that the information filed by the Contractor in accordance with the requirements of New York State Finance Law §139-k was intentionally false or intentionally incomplete.
7. Failure of Contractor to maintain vendor responsibility substantially similar to, or superior to, its status as of the execution of this Agreement.
8. Failure of Contractor to maintain financial stability substantially similar to, or superior to, its status as of the execution of this Agreement.
9. A finding that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law was not timely filed during the term of the Contract or the Certification filed was intentionally false or intentionally incomplete.

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

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

B. Termination for Convenience

The Department may terminate this contract in whole or in part at any time for convenience upon thirty (30) days written notice to the Contractor without penalty or other early termination charges due.

C. Procedure for Termination

In the event of Termination for Cause or convenience, the parties agree to cooperate in a manner to effect an orderly termination of the Contract and to adhere to the disengagement process set forth in Section I.F. of the RFP and adhere to the required disengagement plan.

Article XIV. Indemnification and Limitation of Liability

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A. Indemnification

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

B. Indemnification Relating to Third Party Rights

The Contractor will also indemnify and hold the Department harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Department in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Departments gross negligence or willful misconduct, provided that the Department shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Department the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the Department is given a refund for any amounts paid for the period during which Usage was not feasible.

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Department of any Product without Contractor's approval.

In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Authorized User's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Department and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the Department and secure a continuance to permit the Department to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Department's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

C. Limitation of Liability

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

1. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Contract for the Products and services, or parts thereof forming the basis of the Department's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Contract) or (ii) one million dollars (\$1,000,000), whichever is greater.

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2. The Department may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Department unless Contractor at the time of the presentation of claim shall demonstrate to the Department's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
3. Notwithstanding the above, neither the Contractor nor the Department shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Department, the Contractor, or by others.

D. Force Majeure

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Department in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Neither the Contractor nor the Department shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Department to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed. In such event, Contractor shall notify the Department, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b) if the delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result.

E. Breach of Confidentiality

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

F. Information Security Breach and Notification Act

Contractor expressly agrees to comply with the provisions of Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005, commonly known as the Information Security Breach and Notification Act (the "ISBNA" or "Act"), and any future amendments thereto. Contractor shall comply with all obligations imposed by the notice provisions of the ISBNA with respect to any computerized "private information" (as defined in the Act) received, handled, processed, uploaded, or maintained by Contractor on behalf of DTF under this Contract (hereinafter, the "DTF Information"). In the event of a "breach of the security of the system" (as defined by the Act), Contractor shall immediately notify DTF upon discovery or notification of such breach. Such notice to DTF shall be made in one of the following ways: by contacting the Contractor's DTF liaison for the contract, or by e-mail to Dave_Beals@tax.state.ny.us, or by telephone to (518) 457-0604. Contractor shall immediately commence an investigation, in cooperation with DTF, to determine the scope of the breach and to restore the security of the system. To the extent DTF determines that further notifications are required to be sent out pursuant to the Act, Contractor shall be responsible for providing all notifications to all required recipients including, in accordance with New York State policy, non-New York State residents whose private information is reasonably believed to have been exposed as a result of the breach, and all costs associated with providing such notices shall be borne by the Contractor. It is expressly agreed that Contractor shall be obligated to receive authorization from DTF *prior* to making any notifications to any individuals, the State Office of

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Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consumer reporting agencies, of a breach of the security of the system, or concerning making any determination to delay notifications due to law enforcement investigations. Contractor agrees that DTF shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a breach of security of the DTF Information. Nothing contained herein shall be interpreted as reducing or altering Contractor's obligations under section 899-aa of the General Business Law.

G. Disengagement Plan

The Contractor will provide the Department within 180 days of Contract approval, a detailed disengagement plan for its approval. If the disengagement plan is not approved by the Department, Contractor shall correct all deficiencies identified by the Department during its review and submit a revised plan within a time agreed upon by the parties.

At a minimum, the Contractor must:

1. Remove all Department data from the Contractor's system including both on-site and off-site back up copies. Storage devices such as tape, hard disk drives, CD's and DVD's must be physically destroyed or securely overwritten to prevent unauthorized disclosure of Department data.
2. Provide a letter, signed by two officials to bind the contractor, affirming that the Contractor has complied with all terms and conditions of the Disengagement Plan.

Article XX: Invariable Terms and Conditions

A. Appendix A

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

B. Tax Liabilities:

All outstanding tax liabilities due to the State of New York from the Contractor, or Contractor's partners, employees, agents and subcontractors engaged in providing services under this Agreement, other than tax liabilities being contested by any such party, must be satisfied prior to the execution of this Agreement, or a payment schedule arranged for their speedy satisfaction.

C. Payment Records:

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

D. Governing Law:

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

E. Required Approval:

This Agreement and/or any amendments to this Agreement will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller.

F. Funding:

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

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

G. Assignment of Rights and Duties:

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

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

H. Continuity of the Agreement

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

Notwithstanding the foregoing, Appendix A, Article VIII (Secrecy) and Article XIV (Indemnification and Limitation of Liability) shall survive the term of this Contract.

I. Cooperation with Third Parties

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

J. Severability

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

K. Conflict of Interest

If during the term of this Agreement and any extension thereof the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. Should the Contractor engage any current or former New York State employee as its own employee or as an independent contractor because of such employee's knowledge of New York State finances, operations or knowledge of the State's programs, or any current or former State employee who in the course of his State employment had frequent contact with Management level Contractor employees, the Contractor shall notify the State, in writing, immediately; should the State thereafter determine that such employment is inconsistent with State or federal Law, the State shall so advise the Contractor, in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be

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terminated.

L. Subcontractors

Subcontracting or assignment of the Contractor's duties and responsibilities will not be allowed without prior written approval of the Department as specified in *Appendix A* of this Agreement. In the event the Contractor seeks to subcontract or assign any of its duties or responsibilities under this Agreement, it shall furnish to the Department the following:

1. A description of the supplies or services to be provided under the proposed subcontract;
2. Identification of the proposed subcontractor, including protected class status; and,
3. Any other information or documentation requested by the Department.

M. Public Officers Law

1. The Contractor agrees not to engage in any conduct which the Contractor knows would violate or would assist an employee of the State in violating Sections 73 and 74 of the Public Officers Law.
2. The Contractor further recognizes that an administrative or judicial finding that the Contractor has violated any of the statutes specified in the Contractor Background Questionnaire completed prior to the award of this Contract shall entitle the State to terminate the Contract, at its discretion, within thirty (30) days after the Contractor notifies the State of such finding or the State notifies the Contractor that it has become aware of such finding.
3. Any termination of the Contract by the State under this Paragraph M shall be deemed to be a termination of the Contract for cause. The remedies set forth in this section shall be in addition to any other remedy available to the State under this Contract or under any other provisions of law.

N. Rights of the State

1. License/Ownership/Title of Products Furnished

Contractor warrants full ownership, clear title or perpetual license rights to any and all tangible or intangible products furnished, used or modified by the Contractor or third parties on behalf of the Department, and Contractor shall be solely liable for the full cost of acquisition associated therewith. Contractor shall provide the State with appropriate documentation indicating the vesting of such rights in the Contractor, and/or the right to transfer or transfer of such rights, as requested by the State. The cost of obtaining such rights for continued perpetual use of such product(s) by the State upon Project completion shall be deemed to have been included by Contractor in its hourly rates. Such products include, without limitation, all hardware, commodities, custom programming or third party software, training modules, printed materials, source codes, or any other products or services furnished pursuant to a project award. The Contractor shall fully indemnify the State for any loss, damages or actions arising from a breach of said warranty without limitation.

2. Title to Proprietary Information Furnished

Any and all proprietary written documentation, information, object or source code and software provided to the State shall remain the property of Contractor. In such event, Contractor hereby grants Department and its Authorized Users a personal, non-transferable and non-exclusive license to use all such documentation, technical information, confidential business information and all

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software and related documentation, in whatever form recorded (all hereinafter designated "property"), which are furnished to the State for testing purposes only.

3. Ownership/Title to Custom Products/Programming Deliverables

All custom products, including custom programming or any other deliverables, including, without limitation: software source code, object code, user or training manuals, programming, reports, and any other materials, preliminary, final and otherwise, prepared, written or developed for the State in the performance of services shall be furnished to and shall become the sole and exclusive property of the Department and shall be treated as confidential with the reciprocal proprietary obligations in the foregoing paragraph N.2. imposed upon the Contractor, its subcontractor and partners. The State retains ownership rights to modifications developed for the Department pursuant to Project Award, including modifications made or incorporating third party proprietary components, or components transferred under perpetual license to the Department pursuant to paragraph N.1. In all such events, the Contractor/Offeror shall be deemed to have granted or secured a perpetual license to the Department for Contractor or third party product being furnished and modified, in accordance with the provisions of paragraph N.1. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the custom products, including custom programming or any other Project Award deliverables, when completed and delivered to the Department are protected against unauthorized copying, reproduction and marketing by or through Contractor.

O. Record Retention

1. Except as otherwise specifically provided for herein or any resulting contract for the retention of data files obtained by the Contractor in the performance of its duties under this Agreement, the Contractor agrees to preserve all Agreement-related records in accordance with the provisions of Paragraph 10 of *Appendix A*. Records involving matters in litigation shall be kept for a period of not less than three (3) years following the termination of the litigation. Microfilm copies of any Agreement-related documents may be substituted for the originals with the prior written approval of the Department, provided that the microfilming procedures are accepted by the Department as reliable and are supported by an adequate retrieval system.
2. The Contractor shall be responsible for assuring that the provisions of this Section shall apply to any subcontract related to performance under this Agreement.

P. Access To And Audit Of Agreement Records

1. All records and information obtained by the State pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the State for the purpose of performing this Agreement in any manner, or for purposes of meeting any and all federal reporting and/or auditing requirement, in its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such records or information. Notwithstanding the preceding sentence and in addition to the provisions set forth in *Appendix A*, the Department agrees, in those instances in which it has discretion, not to disclose outside those Government agencies involved in the performance of this Agreement and then only to the personnel who are involved in the performance, the following data:
 - a. Any resume or other description of qualifications which includes the name of the individual;
 - b. Any individual's actual salary;
 - c. The Contractor's indirect rates including labor overhead, General and Administrative (G&A) and fee;

EXHIBIT 4 PRELIMINARY CONTRACT

- d. The methodology for calculating those indirect rates including the allocation base; and
 - e. The Contractor's corporate financial statements.
2. The Contractor shall promptly notify the Department of any request by anyone for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or Contractor's regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, shall not require notification to the State provided that rights of confidentiality or proprietary interests are preserved.
 3. The Contractor shall be responsible for assuring that the provisions in this Section shall apply to any subcontract related to performance under this Agreement.

Q. Other Agency Use

The terms and conditions of this Agreement may be extended to any other New York State agency through the use of a formally executed agreement between the Contractor and the state agency subject to review and approval of the Office of the Attorney General, and the Office of the State Comptroller.

R. Authorized Representatives

1. Notice of Termination

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

- Chief Financial Officer
- Assistant Director, Procurement Bureau

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

To be Provided

2. Execution of Contract Documents

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

On behalf of the Department are:

- Commissioner
- Executive Deputy Commissioner
- Chief Financial Officer
- Assistant Director, Procurement Bureau

On behalf of the Contractor are:

-To be Provided

S. Notices

All notices given pursuant to this Agreement shall be given in writing and shall be deemed properly received if given by hand, sent certified mail return receipt requested or by means of an overnight courier service offering next day delivery and addressed as follows:

1. Notices to the Department from the Contractor:

EXHIBIT 4 PRELIMINARY CONTRACT

Ms. Catherine Golden, Assistant Director
New York State Department of Taxation & Finance
Office of Budget and Management Analysis
W.A. Harriman Campus
Building #9, Room 234
Albany, NY 12227

2. Notices to the Contractor from the Department:
To be Provided

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

Contractor.

**NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE**

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date

Attorney General

Office of the State Comptroller

CORPORATION
STATE OF
COUNTY OF

On this _____ day of _____, 2008, before me personally came _____, to me known, who being duly sworn, did depose and say that s/he resides in _____; that s/he is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that s/he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that s/he signed his/her name thereto by like order.

NOTARY PUBLIC

EXHIBIT 5

Draft Memorandum of Agreement

THIS MEMORANDUM OF AGREEMENT (“MOA”) is made between and among the New York State Department of Taxation and Finance (“DTF”), _____ (Name of DTF’s Authorized Designee), a _____ (legal form of entity) with its principal office at _____ (the “Authorized Designee”) and _____ (Name of Financial Institution), a _____ (legal form of entity) with its principal office at _____ (the “Financial Institution”)

WHEREAS, section 1701 of the New York State Tax Law (“Tax Law”) requires DTF to develop and operate a Financial Institution Data Match System (“FIDMS”) for the purpose of identifying and seizing the non-exempt assets of tax debtors identified by the Commissioner of Taxation and Finance (the “Commissioner”); and

WHEREAS, the Commissioner, on behalf of DTF, is authorized to designate a third party to develop and operate the FIDMS; and

WHEREAS, section 1701 of the Tax Law requires each Financial Institution doing business in New York State to develop and operate, in conjunction with the Commissioner or the Commissioner’s authorized designee, a data match system to facilitate the identification and seizure of the non-exempt assets of tax debtors; and

WHEREAS, the Financial Institution is a Financial Institution as defined by section 1701(1)(c) of the Tax Law and is doing business within New York State; and

WHEREAS, DTF and the Financial Institution wish to enter into this Memorandum of Agreement (“MOA”) to effectuate the FIDMS and the required transfers of information;

NOW THEREFORE, it is mutually agreed as follows:

1. MATCH METHODOLOGY. The Financial Institution elects one of the following methods to accomplish the data match with DTF (check only one):

Method 1 The Financial Institution shall, quarterly, submit a data file to DTF’s Authorized Designee, that contains records of all accounts held by the Financial Institution.

Method 2 Each calendar quarter, DTF’s Authorized Designee, shall forward a “request file” to the Financial Institution, in the format described in section 5 of this MOA, containing a list of all tax debtors, as such term is defined in section 1701(1)(b) of the Tax Law. The Financial Institution shall match the records contained in the request file against all accounts maintained by the Financial Institution. For each match, the Financial Institution shall submit to DTF or its authorized designee, a “return file,” in the format described in section 5 of this MOA, specifying each matched tax debtor’s name, address, social security number or other taxpayer identification number, and all account numbers and balances for each account maintained by the tax debtor at the Financial Institution.

2. TIMEFRAMES.

a. Method 1. DTF’s Authorized Designee, in coordination with the Financial Institution, will select a specific quarterly date and time for the Financial Institution to provide DTF or its Authorized Designee with the required data file.

b. Method 2. DTF’s Authorized Designee, in coordination with the Financial Institution, will select a specific quarterly date and time for the Financial Institution to accept the request file. The Financial Institution will

EXHIBIT 5

Draft Memorandum of Agreement

complete the required match, and submit the return file to DTF or its Authorized Designee within thirty (30) calendar days of receiving the request file.

3. RETURN OF DATA.

a. If the Financial Institution has elected Method 1, following completion of each quarterly data match, DTF's Authorized Designee shall return the Financial Institution's data file to it.

b. If the Financial Institution has elected Method 2, following completion of each quarterly data match, the Financial Institution shall return the request file to DTF's Authorized Designee, at the same time as the return file. The Financial Institution shall also purge the request file data and the returned file data from its electronic files immediately upon completion of each quarterly match, and certify same to DTF's Authorized Designee in writing, addressed to the person named in Section 11.b of this MOA.

4. INITIATION AND SUBSEQUENT SUBMITTAL DATES.

The parties agree that the month and week that the Financial Institution will commence the data match is _____ . All subsequent data matches shall continue during the same selected month and week of each quarter.

5. DATA FORMAT AND MEDIA METHODOLOGY.

All data exchanged or submitted to and from the Financial Institution under this MOA shall be in a format agreed upon by the Department, or its Authorized Designee, and the Financial Institution. Such file formats shall be provided to the Financial Institution by DTF's Authorized Designee.

6. NOTICE TO DEPOSITORS AND ACCOUNT HOLDERS.

The Financial Institution may disclose to its depositors or account holders that DTF or its authorized designee has the authority to request certain identifying and other information regarding certain depositors or account holders under the FIDMS for New York State tax collection purposes.

7. IMMUNITY FROM LIABILITY.

A Financial Institution that complies with the provisions of this MOA will not be liable under New York State law to any person for the disclosure of information to the Commissioner or the Commissioner's authorized designee, or for any other action taken in good faith to comply with the requirements of section 1701 of the Tax Law and this MOA.

8. Confidentiality

a. DTF, its Authorized Designee, and the Financial Institution shall adopt privacy policies and security procedures subject to State and Federal laws and regulations, to ensure that information contained in their respective records and obtained from each other shall be kept secure and confidential and shall be used solely for the purposes of the FIDMS as specified herein and by law.

The information exchanged shall not be used for any purposes other than for the purposes set forth in this MOA and may not be disclosed to any person except to the extent necessary to conduct the data matches and fulfill the purposes of this MOA.

DTF's Authorized Designee and the Financial Institution shall enter into a Confidentiality Agreement that limits disclosure of the confidential information on a need-to-know basis. Only those individuals who are working on the FIDMS and who have a need-to-know shall be privy to the confidential information exchanged between DTF's Authorized Designee and the Financial Institution. In addition, DTF's Authorized Designee and the

EXHIBIT 5

Draft Memorandum of Agreement

Financial Institution shall designate in writing the names and contact information of those individuals who are authorized to deliver and receive the confidential information pursuant to the Confidentiality Agreement.

b. DTF's Authorized Designee and the Financial Institution will require each employee assigned to the FIDMS to sign Form **DTF-202 Agreement to Adhere to the Secrecy Provision of the Tax Law and the Internal Revenue Code** as set forth in **Attachment A** of this MOA. The forms will be retained by DTF's Authorized Designee and the Financial Institution and provided to DTF upon request.

The various secrecy provisions of the Tax Law prohibit independent contractors from disclosing tax information in any manner and provide for misdemeanor prosecution for violations. The various secrecy provisions of the Internal Revenue Code provide for felony prosecution for unauthorized disclosure of Federal tax information in the possession of the Department.

All information about the Department's operations not covered by the preceding must be kept confidential by DTF's Authorized Designee and the Financial Institution as if they were so covered.

DTF's Authorized Designee and the Financial Institution agree not to divulge or use, for their own benefit or the benefit of others, confidential tax information; and to follow § 73 and 74 the Public Officers Law (**See Public Officers Law § 73 and 74**).

9. COSTS.

DTF and the Financial Institution shall each be responsible for their own costs in administering this program.

10. PROHIBITION ON CERTAIN DISCLOSURES.

Both the Financial Institution and DTF's Authorized Designee are prohibited from disclosing to a tax debtor that the name of the tax debtor has been received from or furnished to the Commissioner, unless authorized in writing by the Commissioner to do so. A violation of this section will result in the imposition of the civil penalty prescribed by section 1701(5) of the Tax Law.

11. SUBMISSIONS AND COMMUNICATIONS TO DTF.

a. All electronic files and data required by this MOA, as well as technical questions relating to such files and data, shall be directed by the Financial Institution to:

(Insert DTF's Authorized Designee's name and address)

Telephone, facsimile or e-mail inquiries may be made, toll free, during normal business hours to:

(Insert DTF's Authorized Designee's name, contact person and e-mail, phone or fax)

b. All other communications and documents not included in (a) above, including agreements, notices, or other written communications, from the Financial Institution to DTF or its Authorized Designee relating to or required under this MOA, shall be directed to:

(Insert DTF's or Authorized Designee's name, address and contact person)

Telephone, facsimile or e-mail inquiries may be made, toll free, during normal business hours to

(Insert DTF's or Authorized Designee's name, contact person and e-mail, phone or fax)

EXHIBIT 5

Draft Memorandum of Agreement

12. SUBMISSIONS AND COMMUNICATIONS TO FINANCIAL INSTITUTION.

a. The submission of an electronic inquiry file by DTF's Authorized Designee to the Financial Institution, as well as technical questions relating to any electronic files received from the Financial Institution shall be directed by DTF's Authorized Designee to:

(Insert Financial Institution name, address and contact person)

Telephone, facsimile or e-mail inquiries may be made, toll free, during normal business hours to:

(Insert Financial Institution name, contact person and e-mail, phone or fax)

b. All other communications and documents not included in (a) above, including agreements, notices, or other written communications, from DTF or its Authorized Designee to the Financial Institution relating to or required under this MOA, shall be directed to:

(Insert Financial Institution name, address and contact person)

Telephone, facsimile or e-mail inquiries may be made, toll free, during normal business hours to:

(Insert Financial Institution name, contact person and e-mail, phone or fax)

13. CHANGE OF ADDRESS.

Any party may later specify a change in the above addresses by written notice to the other parties at least thirty (30) calendar days in advance of the effective date of the change. Changes to the Financial Institution's name or organizational structure that would affect the purpose or operation of this MOA shall be provided to DTF by written notice at least thirty (30) calendar days in advance of the effective date of the change.

14. MODIFICATION.

No Modification of this MOA shall be effective unless in writing executed by the Financial Institution, DTF and DTF's Authorized Designee.

15. APPLICABLE LAW.

This MOA shall be construed in accordance with the laws of the State of New York, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

16. AGREEMENT PERIOD.

This MOA shall be effective on the date it is executed by the parties and shall remain in effect until amended or terminated by the mutual consent of the parties; provided, however, it may be terminated by either party in the event of a substantial change in the law of New York State affecting the duties of the parties in relation to data matches.

IN WITNESS WHEREOF EACH PARTY, THROUGH ITS DULY AUTHORIZED REPRESENTATIVE, HAS CAUSED THIS AGREEMENT TO BE EXECUTED AS OF THE DATE INDICATED BELOW:

EXHIBIT 5

Draft Memorandum of Agreement

NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE:

By: _____
Date: _____

DTF's Authorized Designee

By: _____
Date: _____

FINANCIAL INSTITUTION:

By: _____
Date: _____

EXHIBIT A 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 Assistant Director, Procurement of the Office of Budget and Management Analysis. In addition, matters that are perceived to contain, or are potentially confidential or trade secret information should be shared with the Chief Financial Officer of the Office of Budget and Management Analysis for possible direction. Staff should document the subject matter and results of informal inquiries. As appropriate, DTF responses to the inquirer should indicate the existence of a formal protest policy available to them should the informal process fail to resolve the matter.

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

Formal Written Protests

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

Submission of Bid or Award Protests

Deadline for Submission

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

EXHIBIT A BID PROTEST POLICY

Contents

A formal protest must include:

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

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

Review and Final Determination

Copies of all protests will be provided to the Assistant Director, Procurement of the 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 Assistant Director, Procurement of the 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 Assistant Director, Procurement of the 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 SFL § 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.

EXHIBIT A BID PROTEST POLICY

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 SFL § 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 § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final § 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 B

ST-220 CONTRACTOR CERTIFICATION FORMS



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

ST-220-CA

(6/06)

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

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

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

I, _____, hereby affirm, under penalty of perjury, that I am _____

*(name)**(title)*

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

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

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

If you have questions, please call our information center at 1 800 698-2931.

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

When to complete this form

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

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

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

EXHIBIT B

ST-220 CONTRACTOR CERTIFICATION FORMS



New York State Department of Taxation and Finance

Contractor Certification

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

ST-220-TD

(6/06)

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

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

General information

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

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at www.nystax.gov. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

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

Mail completed form to:

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

Privacy notification

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

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

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

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

 **Internet access:** www.nystax.gov
(for information, forms, and publications)

 **Fax-on-demand forms:** 1 800 748-3676

 **Telephone assistance** is available from 8:00 A.M. to 5:00 P.M.
(eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

 **Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

EXHIBIT B

ST-220 CONTRACTOR CERTIFICATION FORMS

Page 2 of 4 ST-220-TD (6/06)

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

Make only one entry in each section below.

Section 1 — Contractor registration status

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

Section 2 — Affiliate registration status

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

Section 3 — Subcontractor registration status

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

ATTACHMENT 1

BIDDER'S CHECKLIST

Volume 1 - Qualifying, Technical and Administrative Response Requirements

Section 1

- Executive Summary

Section 2 Qualifying Requirements

- Attachment 2, Qualifier Response Form

Section 3 Technical Requirements

- Attachment 3, Bidder Experience and Reference Form
- Attachment 4, IT System Requirements, Security and Confidentiality
- Attachment 5, IT System Requirements, Communication Environments
- Attachment 6, IT System Requirements, File Processing
- Attachment 7, IT System Requirements, IT Staff
- Attachment 8, IT System Requirements, Change Control Process
- Attachment 9, Insurance

Section 4 Administrative Requirements

- Proposal Transmittal Letter
- Attachment C, Designation of Prime Contact
- Attachment D, Vendor Responsibility Form
- Attachment E, New York State Department of Taxation and Finance Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code
- Attachment F, MacBride Fair Employment Principles Certification
- Attachment G, Procurement Lobbying Act, Offerer Disclosure of Prior Non-Responsibility Determinations
- Attachment H, Procurement Lobbying Act, Offerer's Certification of Compliance with State Finance Law 139-k(5)

Volume 2 - Cost Proposal Requirements

- Attachment 10, Financial Response Form

ATTACHMENT 2 QUALIFIER RESPONSE FORM

BIDDER'S NAME: _____

The Bidder must complete this form in response to the Qualifying Requirements, as requested in Section II.A, Technical Qualifications – Firm Experience/Exposure, Section II.B. Insurance and Financial Stability as requested in Section II.C.

Part A:

Provide dates your firm has been in the business of providing large-scale data match services:

Attach additional forms as necessary for the number of clients to demonstrate the three years experience within the past five years in which each system must have been fully operational for a minimum of one year.

Qualifying Client Information

Client Business Name: _____

Client Address: _____

Client Contact Name: _____

Client Phone Number: _____ Client Fax Number: _____

Client E-Mail address: _____

of Files/Records Involved for Matching _____

of Separate Entities Involved in Data Matching _____

Contract Start Date _____ Contract End Date _____

For each of the Client Qualifiers, the Bidder must also provide a narrative as requested in Section II.A which details your firm's experience in the design, development, implementation and operation of large-scale data matches, utilizing electronic file exchange technology; and the firm's experience with multiple entities, including length of time on each large scale data matching project identified in response to this RFP.

Part B:

Insurance Information

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

ATTACHMENT 2 QUALIFIER RESPONSE FORM

Insurance Company Name: _____

Contact Name: _____

Address: _____

Phone Number: _____

The bidder must also attach a certificate of insurance demonstrating that the bidder's company and all staff are insured against financial losses resulting from bidder's employees' actions or other documentation to support this requirement. This certificate should include:

A description of each type of coverage; and

The amount of coverage for each type listed.

Part C:

As Attachment 2, Part C, please provide the required financial statements and other documentation as requested in Section II.C.

ATTACHMENT 3

Bidder Experience and Reference Form

BIDDER'S NAME: _____

The Bidder must complete one (1) form **for each** contract/reference in response to the requirements outlined in **Section III.A**, Bidder Experience and Reference Requirements.

Note: Bidder should provide information for three (3) contracts and a maximum of two alternate contracts which they have engaged in for data matching services within the past five years. The system for each contract must have been fully operational for a minimum of one year as of the date of bid submission for this RFP. This experience must include the design, development, implementation and operation of a system utilizing electronic file exchange technology. If the bidder is unable to provide three (3) contracts, the bidder should provide as many contracts as possible.

Client Business Name: _____

Client Address: _____

Client Contact Name: _____

Client Phone Number: _____ Client Fax Number: _____

Client e-mail address: _____

Contract Information:

1. Contract Dates (Month/Year)

Begin Date _____ End Date _____

2. Volume of Files/Records Involved in Data Matching _____

3. Number of Separate Entities Involved in Data Matching _____

4. Type of Entity: Federal State Other – Please describe:

5. Financial Institution Experience:

Matching accounts with multiple financial institutions.

Yes No

Check the box if this is an Alternate Reference

ATTACHMENT 4

IT System Requirements, Security and Confidentiality

BIDDER'S NAME: _____

Use this form as a guideline to address the security and confidentiality requirements as requested in Section III.B.1.

1. The bidder must describe how it will assure the security and confidentiality of the Department's data. The bidder's response will be evaluated to determine if the requirements have been met.

The bidder/contractor should submit evidence of its existing security programs, policies and procedures which will be evaluated and scored to the extent they demonstrate:

- a. Programs, policies and procedures used to provide discretionary access control to systems and data. This information should address both physical security and electronic data security.
- b. Defined roles and responsibilities of all of those using the bidder/contractor's information systems.
- c. Separate computing environments for test, quality assurance, and production systems.
- d. Policies, procedures and controls for backup and recovery of data.
- e. Off-site storage and disaster recovery operations.
- f. A process and procedure which conforms to federal and state tax law requirements for controlled destruction of system output or other documents containing tax debtor identifying data (name, address, identification numbers, etc.).
- g. Protection against unauthorized access or disclosure 1) by employees, consultants, and others located at its facilities and 2) from external sources, such as dial-in or via Internet access.
- h. Processes to monitor the bidder/contractor's compliance with its information security policies, such as internal audit controls and/or independent audit programs.
- i. Network security controls or programs, such as virus protection, intrusion detection systems, and firewall rules that protect the bidder's information systems from unauthorized access.
- j. Programs, policies and procedures for the encryption of data in transit and data at rest.
- k. Programs, policies and procedures for data sanitation.
- l. Programs, policies and procedures for data breach notification and incident response.

Also, the bidder/contractor must submit a copy of any audits, internal or external, performed within the past three years that cover the requirements set forth in this section. Summary audit results or redacted audits are acceptable, as necessary, to address confidentiality concerns. Summaries should include information relating to the adequacy of the bidder/contractor's security measures including any deficiencies found.

ATTACHMENT 5

IT SYSTEM REQUIREMENTS – Communication Environments

BIDDER'S NAME: _____

Complete this form and provide the required documentation as requested in Technical Proposal Requirements, Section III.B.

All files being exchanged between the Contractor and the Department must use an electronic data exchange protocol acceptable to the Department, as described in Section III.B.2. The Department would prefer this exchange via the internet. File transfer methods that will not be supported by the Department are analog and digital dial up, Value Added Network's (VAN) and DSL connections.

The contractor must agree to make technological changes in order to meet upgrades to industry supported standards.

Part 2.a Electronic Data File Exchange

The bidder must provide:

- **A detailed narrative describing the bidder's proposed method of electronic data file exchange.**
- **A detailed narrative describing the bidder's data communication security measures.**

Note: Generic system information, white papers and/or promotional material are not sufficient to meet the requirements of this proposal. The bidder must indicate its approach to each of the areas listed above.

Part 2.b Technology Updates

BIDDER AFFIRMATION

The bidder agrees it will make technological changes to meet upgrades to industry supported standards:

Yes **No**

ATTACHMENT 6

IT SYSTEM REQUIREMENTS – File Processing

BIDDER'S NAME: _____

Complete this form as requested in **Technical Proposal Requirements, Section III.B.3, File Processing**. During the Development phase, the Department will establish a schedule to be mutually agreed upon by the Department and the Contractor for the electronic transmission of files between the Department and the contractor. The contractor must adhere to this schedule of file transfers. Files must be processed timely. Contractor must store a minimum of twelve (12) generations of scheduled Contractor to DTF Return files.

BIDDER AFFIRMATION

The bidder agrees to adhere to the file exchange schedule and the minimum file back up.

Yes

No

ATTACHMENT 7 IT SYSTEM REQUIREMENTS – IT Staff

BIDDER'S NAME: _____

Complete this form and provide the required documentation as requested in Technical Proposal Requirements, Section III.B.4, IT Staff.

Sufficient staff must be assigned to complete the Development Phase in a timely manner and to provide adequate support during the duration of the contract. The Department would prefer to have continuity of staff from the development phase to ongoing support after certification. Sufficient IT staff must be assigned to communicate and coordinate resolution of any issues that may occur, correct any problems, and implement any changes within two (2) business days unless otherwise agreed to in writing. The Department reserves the right to request additional staff, as well as staff substitutions for work-related cause.

PART 1

BIDDER AFFIRMATION

The bidder must agree it will assign the requisite staff necessary to develop, test and implement the services requested in the RFP within the time frames detailed under the "Post Award Timetable," and to successfully maintain the IT system during the life of the contract.

Yes

No

PART 2

The bidder must submit a narrative which describes the process and procedures in place for notifying customers of issues encountered with the production system. This must include method of notification, identify personnel (roles) involved in the notification, coordination of the resolution, and implementation of the changes needed to resolve the problem.

PART 3

A general staffing plan must be provided. The plan must include the following staffing details; i.e. a listing of titles assigned to the project by the bidder (ex. Project Manager, Applications programmer(s), Network/Communications Specialists, Business Analyst, Testing Staff, other roles as applicable), the number of staff assigned in each of the titles identified, and a general description of the requisite skills required by your organization and/or possessed by staffing in each title (ex., education, professional or technical certifications and years experience for assigned staff).

ATTACHMENT 8

IT SYSTEM REQUIREMENTS – Change Control Process

BIDDER'S NAME: _____

Complete this form and provide the required documentation as requested in Technical Proposal Requirements, Section III.B.5, Change Control Process.

Generally accepted data processing procedures and practices recommend that all system changes be implemented using methodology that assures the reliability, availability, and integrity of the information system. The bidder should have an established change control process in place.

The bidder must provide a description of the Change Control process in use. This must include the roles of staff involved in the review, evaluation, and approval of system changes and a description of the testing processes, including environments utilized for testing.

ATTACHMENT 9

Insurance

Prior to the commencement of the work to be performed by the contractor hereunder, the contractor shall file with The People of the State of New York, the Department of Taxation and Finance (hereinafter referred to as the "Department"), Certificates of Insurance evidencing compliance with all requirements contained in the contract. Such Certificates shall be of form and substance acceptable to the Department.

BIDDER AFFIRMATION

The bidder agrees it will obtain insurance coverage as defined in Section III. C:

Yes **No**

ATTACHMENT A
Procurement Lobbying Act
Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines

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

Procurement Description, Contract or Bid Number: _____

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 B NOTIFICATION OF INTENT TO BID

Please indicate your interest in submitting a proposal for this acquisition by completing and returning this form by the date indicated on the Schedule of Events. The form can be e-mailed to bfs_contracts@tax.state.ny.us (preferred) or mailed to:

New York State Department of Taxation and Finance
Office of Budget and Management Analysis, Procurement
Building 9, Room 234
W.A. Harriman Campus
Albany, NY 12207

Date: _____

Bidder's Legal Business Name: _____

Bidder's Doing Business as Name: _____

Bidder's Federal or Taxpayer Identification Number: _____

Business Address: _____

Name of Authorized Representative: _____

Title: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Authorized Signature: _____

Printed Name: _____ Title: _____

Date: _____

Please check the appropriate box(es):

- We **are** interested in submitting a proposal.
- We **are** a certified minority or women-owned business.
- We **are not** interested in submitting a proposal for this for this solicitation for the following reason(s):

ATTACHMENT C DESIGNATION OF PRIME CONTACT

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

Bidder's Legal Business Name: _____

Bidder's Doing Business as Name: _____

Bidder's Federal or Taxpayer Identification Number: _____

Business Address: _____

Name of Prime Contact: _____

Title: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT D VENDOR RESPONSIBILITY FORM

BIDDER'S NAME: _____

Bidders must complete a Vendor Responsibility Questionnaire in response to this RFP. Bidders are invited to file the required Vendor Responsibility Questionnaire online via the OSC New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System instructions available at www.osc.state.ny.us/vendrep 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 helpdesk@osc.state.ny.us. Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at www.osc.state.ny.us/vendrep 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 E

DTF-202 (3/00)

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

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

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

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

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

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

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

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

Contractor Name: _____

Federal or Taxpayer Identification Number: _____

Address - Street: _____

City: _____ State: _____ ZIP code: _____

Authorized Signature: _____

Name (*please print*): _____

Date: _____

ATTACHMENT F MACBRIDE FAIR EMPLOYMENT PRINCIPLES CERTIFICATION

BIDDER'S NAME: _____

**"NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:
MacBRIDE FAIR EMPLOYMENT PRINCIPLES"**

In accordance with Chapter 807 of the Laws of 1992, the bidder, 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),

1. Have no business operations in Northern Ireland: _____Yes

or

2. 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 G
PROCUREMENT LOBBYING ACT
Offerer Disclosure of Prior Non-Responsibility Determinations

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

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

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

ATTACHMENT G
PROCUREMENT LOBBYING ACT
Offerer Disclosure of Prior Non-Responsibility Determinations continued

Procurement Description, Contract or Bid Number: _____

Offerer Name: _____

Offerer Address: _____

Telephone Number: _____

e-Mail Address: _____

Name and Title of Person Submitting this Form: _____

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

No Yes

If yes, please answer the following questions:

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

No Yes

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

No Yes

ATTACHMENT G
PROCUREMENT LOBBYING ACT
Offerer Disclosure of Prior Non-Responsibility Determinations continued

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

Government Entity: _____

Date of Finding of Non-responsibility: _____

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

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

No Yes

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

Government Entity: _____

Date of Finding of Non-responsibility: _____

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

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

By: *(Signature)* _____

Name: *(Please print)* _____

Date: _____

ATTACHMENT H
PROCUREMENT LOBBYING ACT
Offerer's Certification of Compliance with State Finance Law 139-k(5)

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

Offerer Certification

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

By: *(signature)* _____

Date: _____

Procurement Description, Contract or Bid Number:

Name *(Please print)*: _____

Title: _____

Offerer Name: _____

Offerer Address:

Telephone Number: _____

E-Mail Address: _____